



EMPLOYMENT TRIBUNALS

Claimant: Ms T Gardiner

Respondent: Sophie Skipper Photography Limited

Heard at: East London Hearing Centre (by CVP)

On: Wednesday 10 August 2022

Before: Employment Judge a Frazer
Members: Ms C Edwards
Ms B Leverton

Representation:

Claimant: No attendance

Respondent: Ms S Skipper (Owner/Director)

JUDGMENT

The Claimant's claims for disability discrimination are dismissed under Rule 47 of the Employment Tribunal's Rules of Procedure 2013 upon the Claimant's non-attendance at the hearing.

REASONS

1. This is a claim the subject matter of which goes back to 2019. The Claimant brought claims for unfair dismissal and disability discrimination. Early conciliation started on 2nd March 2020 and the issue of the ACAS certificate was on 20th March 2020.
2. The events which are the subject of the claim happened in 2019 culminating in the Claimant's dismissal on 19th December 2019 (there is a dispute about the effective date of termination with the Respondent saying that the date of termination was 16th January 2020). The Claimant has Crohn's disease and it is accepted that she had this condition at the relevant time.

3. On Monday 24th August 2020 the case came before EJ Tobin for a preliminary hearing and we have had regard to the case management order that was made. At that hearing it was clarified that the Claimant was bringing claims for disability discrimination as follows: three claims for discrimination arising from disability under s.15 Equality Act 2010; two claims for a failure to make reasonable adjustments under s.21 Equality Act 2010 and a claim for victimisation under s.27 Equality Act 2010. The Claimant did not have the requisite qualifying service to bring a complaint of unfair dismissal so this was dismissed upon withdrawal.
4. Regional Employment Judge Taylor had issued case management orders on 10th August 2020 but we did not have those in front of us. EJ Tobin made directions for the provision of evidence in relation to the Claimant's disability and it appears to us that this was complied with since there is medical evidence in the bundle. Mrs Skipper said that there had been co-operation between the parties at the disclosure stage. There was no impact statement but there was medical evidence in the bundle that Mrs Skipper had put in the bundle for this hearing.
5. The hearing was initially listed for 27th to 29th July 2021 but it was postponed to this week owing to Mrs Skipper giving birth to her son. The hearing was to be in person.
6. We heard from Mrs Skipper this morning and considered the emails that she had forwarded to the Tribunal which showed that in the lead-up to the hearing she had chased the Claimant on a number of occasions at her correct email address in order to get her input into the preparation of the bundle. Despite this the Claimant had not responded to her. She had also chased the Claimant to exchange witness statements but the Claimant had not responded to her emails. We found that this conduct was not reasonable because the parties are meant to co-operate with each other to ensure that the bundle and witness statements are ready for the hearing. The Claimant had not responded or notified the Tribunal that she was unable to comply with exchanging witness statements or compiling the bundle, which we would have expected a party to do.
7. In late July the Claimant applied for a postponement of this hearing. On 26th July she emailed the Tribunal to see if there was an update to her application. We had regard to correspondence from the Tribunal to the parties about the postponement application.
8. On 2nd August 2022 the Tribunal wrote to the Claimant rejecting her postponement application. REJ Taylor had given the reasons as the case being old and further to the Claimant's email of 2nd August 2022 must proceed. The hearing was converted to a video hearing for the Claimant's convenience but would proceed as listed.
9. The Claimant then wrote again on 3rd and 8th August 2022 requesting a postponement and on 8th August 2022 the Tribunal wrote to the parties again on behalf of REJ Taylor to say 'no new facts have been presented to the

Tribunal in support of the application to postpone the hearing. Therefore the decision to refuse postponement stands. The hearing will continue as listed. If the Claimant does not attend the judge may either consider the available information for evidence supplied by the claimant and the respondent before making a decision or may dismiss the case because of the Claimant's failure to attend.'

10. We had regard to the Claimant's email to the Tribunal dated 8th August 2022 sent at 1237. We considered this carefully. The Claimant explained that she had been unable to obtain any medical evidence from her GP because he or she was away on leave. She had therefore attempted to get another letter from another doctor in her GP's absence but she had been informed that owing to her extensive medical history the only person who could provide this was her GP. She explained that she was unable to go ahead with the hearing because of the situation with her chronic illness and mental wellbeing. The Claimant explained that she was going to have major surgery in September and needed the time to adjust to the change. She was not in the right frame of mind to deal with the Tribunal. She said, 'unfortunately the Tribunal does not take precedence over my physical and mental health, therefore following a second postponement rejection I will have no other option but to drop the case. It is not a decision I have taken lightly.' The Claimant said that she had sent in evidence from her doctor's review from UCLH. We had regard to correspondence from UCLH in the bundle but this was from 2019 and 2021. There was no updated medical evidence before us.
11. We were shown a couple of photographs and videos of the Claimant undertaking work on 2nd August by Mrs Skipper and she stated that this indicated that the Claimant had been well enough to physically attend work. We took this into account. We also noted that the Claimant had engaged in corresponding with the Tribunal and the Respondent about the postponement requests. We noted that the Tribunal had made an adjustment insofar as it had arranged for the hearing to take place by video link.
12. We decided not to postpone the hearing in the light of the previous postponements. We noted that we had received nothing from the Claimant this morning after the Tribunal had rejected her postponement requests, the last of which being on 8th August 2022: we did not have a witness statement or written submissions from her. We took into account the age of this case and we also queried why medical evidence was not put before the Tribunal at an earlier stage to support any postponement application.
13. We decided to dismiss the claim in the circumstances rather than to hear it in the Claimant's absence. The Claimant had not attended when her postponement request had been rejected nor had she urged us to consider any documents for a hearing proceeding in her absence. This - together with the wording of her email of 8th August - indicated that she was not actively pursuing her claim now. We made the decision to dismiss the claim because the Claimant had not presented any witness evidence. Evidentially she had not

raised a case. The only legal result that would be available to us if we were to hear the claim would be to dismiss it as there was no proof before us.

**Employment Judge A Frazer
Dated: 10 August 2022**