



# EMPLOYMENT TRIBUNALS PRELIMINARY HEARING

Claimant

Respondents

v

Mr C Green

Ms D Commander (1)

Mr D Maybury (2)

Building Product Solutions  
Limited (3)

**Heard: At Leeds by Telephone**

**On: 2 August 2022**

**Before: Employment Judge JM Wade**

**Appearance:**

**For the Claimant: No attendance**

**For the Respondent: Ms Pettinger (solicitor), with the first respondent**

## JUDGMENT

The claims against the respondents are dismissed pursuant to Rule 47 upon the claimant's failure to attend or be represented at today's preliminary hearing.

## REASONS

1 The claimant presented two claim forms to the Tribunal (with numbers above) on 2 April 2022 and 12 April 2022 respectively. There are ACAS certificates for all respondents. The allegations presented against the first two respondents, reasonably discernible in the first claim form, were: unfair dismissal, wrongful dismissal/notice pay and disability discrimination. The information provided included dates of employment which did not give rise to unfair dismissal rights (less than two years' service). The claimant also said he had secured new employment commencing within three weeks of the end of his employment; that he was bullied and harassed by the second respondent; and he made an allegation that the first respondent required him to participate in an occupational health report to decide, "whether you are disabled", suggesting, "in other words if I am disabled I would have been treated differently".

2 The second claim form alleged disability discrimination only, against the third respondent only, and provided a little more detail on the bullying and harassment allegations, namely that they were alleged over the period November 2021 to February 2022, and that they comprised volatile, insulting and threatening calls from the second respondent. The claimant sought five weeks' lost earnings for being unwell, and further compensation. In both claim forms the claimant had ticked a box indicating he did not have disability, albeit he referred to his mental health as being the disability on which he relied.

3 The claims were combined by Order dated April 2022, the respondents presented a combined response on time. The response details included: the claimant was employed from 28 September 2020 as a contracts manager; he had been absent from work unwell from 28 January 2022; that day he presented a grievance about the second respondent. A hearing took place on 7 February; consent was sought for an occupational health assessment, an outcome to the grievance was provided, and the claimant resigned with immediate effect on 19 February 2022. On 12 May 2022 the respondent presented a strike out/deposit application.

4 I directed that the case management hearing would address whether to list a further public hearing to decide that application and/or decide the deposit application. The case management hearing, originally arranged for June, was postponed until today for resource reasons.

5 Today Ms Pettinger and Ms Commander attended this hearing on time. The claimant did not attend. Ms Pettinger told me the claimant had sent her client his case management agenda yesterday evening. That was a typed document in which he had specified that the claims were: "Discrimination".

6 When the claimant had not attended by 10.10am I asked our clerk today to make enquiries of the claimant, but her call went through to his voicemail. Ms Pettinger also made the same call. The fact that the claimant did not attend may reflect that something untoward has happened to him. I very much hope not. More likely is that he has abandoned his claim and is getting on with his life, having found new employment on similar or better remuneration.

7 I could have continued with the hearing in his absence today and made Orders, but having the opportunity to attend or be represented at hearings is fundamental to justice. I did not consider it fair to continue without his input. On the other hand, there are stigmatising discrimination allegations hanging over two individual respondents, and the employing company has the costs of defence.

8 In dismissing the claims for non attendance, I also weigh the Orders I would have made, if the claimant had attended. I would have confirmed with him whether he continued to pursue constructive unfair dismissal and notice pay claims. If the answer had been yes, I would have assessed their prospects of success as nil (unfair dismissal for want of 2 years' service and brought against individuals who were not the employer); constructive wrongful dismissal/notice pay would have required leave to identify the company as the correct employer; further, because the matter which appears in the claim form to have been the last straw, was the request to attend occupational health – that is not an arguable last straw – it is not conduct without reasonable and proper cause; there was good reason to ask him to do so: those with disabilities are entitled to reasonable adjustments in the workplace, that is, to be treated differently and more favourably in some circumstances.

9 As to the discrimination complaints, these are entirely unclear and the claimant has known since the grounds of resistance were presented, and further since the respondent's case management agenda for the June hearing that was postponed, that medical and further information would be required. He appears to have taken no steps to either clarify or provide further information. Again, in all

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likelihood I would have granted the respondent's application for a deposit Order, considering there is little reasonable prospect of the claimant proving either that he was a disabled person, or that if he was, the respondent ought reasonably to have known that. The circumstances include that he took offence at being asked to attend an occupational health appointment and did not do so.

10 In all the circumstances I consider it is fair to dismiss his claim today. If there has been something untoward preventing the claimant's attendance, and he wishes to provide necessary clarification and pursue his claims, there is the possibility of an application for reconsideration of this judgment. Any such application must set out reasons for failure to attend today, and, what conduct of the employer he says caused him to resign and how he says he has been subject to disability discrimination. Any application must be copied to the respondents.

Employment Judge JM Wade

Dated: 2 August 2022