



# EMPLOYMENT TRIBUNALS

## Claimant

Miss H Hassan

## Respondent

v British Broadcasting Corporation  
(BBC)

**Heard at:** London Central (By CVP)

**On:** 16, 17 & 18 November 2022

**Before:** Employment Judge B Beyzade  
Mr A Adolphus (Member)  
Ms M Pilfold (Member)

## Representation

**For the Claimant:** In person (16 November 2022 only)  
Not present and not represented (17 & 18 November  
2022)

**For the Respondent:** Mr N Roberts, Counsel

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The judgment of the tribunal is that:**

1. the claimant's claim for direct disability discrimination having been withdrawn by the claimant, is dismissed under Rule 52 of the Rules contained in Schedule 1 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

2. The applications made by the claimant for postponement of the Final Hearing on 16, 17 and 18 November 2022 are dismissed.
3. The claimant being neither present nor represented during the second day of the Final Hearing and at a point in excess of 364 minutes after the time set for the third day of the Final Hearing and there being no answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with her and the claimant not having otherwise communicated with the Tribunal after the dismissal of her postponement application made on the third day of the Final Hearing; on the respondent's application made at the Bar, the Tribunal dismisses the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

## **Reasons**

### *The claims*

1. The claimant presented a claim for unfair dismissal, disability discrimination, victimisation pursuant to the Equality Act 2010 ("EqA"), and breach of contract (including notice pay and arrears of pay), which the respondent defended.
2. A Preliminary Hearing took place on 09 June 2020 during which the Tribunal set down directions for a Preliminary Hearing to determine various preliminary issues/strike out applications.
3. Pursuant to the Judgment issued to parties on 11 December 2020 (and following the Preliminary Hearing on 10 December 2020) Employment Judge Elliott struck out the claimant's claim in respect of unfair dismissal and breach of contract on the basis that they had no reasonable prospect of success and extended time on just and equitable grounds allowing the claimant to pursue her complaints for disability discrimination and victimisation pursuant to the EqA.

4. Following a Preliminary Hearing before Employment Judge Heath on 14 January 2022, the claimant was granted permission to amend her claim to allege direct disability discrimination, indirect disability discrimination (all relating to the decision not to allow the claimant to move teams in September 2019), discrimination arising from disability, and victimisation pursuant to section 27 of the EqA. The claimant was not granted permission to rely on any other alleged claims.

*Procedural background*

5. A further Preliminary Hearing (case management) took place before Employment Judge Klimov on 07 April 2022 which recorded that the claimant's disability (which is conceded by the respondent – please see the issues recorded below) is depression and that the claims before the Tribunal included direct disability discrimination, indirect disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, and victimisation (whether the respondent subjected the claimant to a detriment as a result of her complaining of “gender-related complaints” in her grievance of January 2017). The list of issues relating to those claims were recorded at pages 150 – 152 of the Hearing Bundle and the Final Hearing was listed to take place by Cloud Video Platform (“CVP”) between 16 and 18 November 2022. He also directed that written submissions should be provided 7 days before the hearing.
6. By an Order dated 04 October 2022 the Employment Appeal Tribunal (“EAT”) directed that the claimant's appeal relating to Employment Judge Klimov's orders shall proceed to a full EAT Hearing (on a date to be notified to parties). His Honour Judge Barklem states in his reasons dated 03 August 2022:

*“The appeal is against Case Management Orders made by EJ Klimov following a hearing on 7th April 2022, and specifically in relation to the Judge's categorisation of the issues at pages 9 and 10 of the document. Essentially they limit the scope of her reasonable*

*adjustments and victimisation claims to 13th September 2013” (see pages 816-817 of the Hearing Bundle).*

7. On 05 October 2022 Employment Judge Klimov refused the claimant’s application for a stay pending the determination of her appeal by the EAT.

8. By an email dated 03 November 2022 the claimant sent an email to the Tribunal in the following terms:

*“I’m sending this email to apply for withdrawal of the direct disability discrimination claim of the above case.*

*The Respondent is copied in this email.”*

9. The claimant sent an email dated 04 November 2022 to the Tribunal in which she made an application for further information and for specific disclosure, which was refused on 08 November 2022.

10. The claimant made an application dated 08 November 2022 to postpone the Final Hearing, which was refused by Employment Judge Klimov on 10 November 2022. As the claimant’s application dated 04 November 2022 was not granted, the claimant’s grounds for making the application were not considered to be well-founded.

11. Following correspondence sent to the Tribunal by the respondent on 11 November 2022, Employment Judge Stout issued directions on 11 and 14 November 2022, respectively. The respondent was directed on 14 November 2022 to produce their submissions in outline form appropriate to answering the claimant’s questions by the start of the hearing so that the claimant as a litigant in person has a fair opportunity to consider and respond to them by the end of the hearing.

*Withdrawal of claimant’s direct discrimination complaint*

12. At the outset of the Final Hearing the claimant confirmed that as stated in her email dated 03 November 2022 she wished to withdraw her

direct disability discrimination claim. The respondent applied for the claimant's direct disability discrimination claim to be dismissed and the claimant did not object. We therefore dismissed the claimant's claim for direct disability discrimination pursuant to Rule 52 of Schedule 1 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* ("the ET Rules").

*The issues to be determined by the Tribunal*

13. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, both parties being in agreement with these:

*1.1. Did the Respondent do the following: on 13 September 2019, require the Claimant to work in her substantive role in BBC Arabic Radio?*

*1.2 The claimant's disability is depression. The respondent concedes that the claimant suffered from depression. The respondent conceded that the claimant was a disabled person by reason of her depression in relation to the material date which is 13 September 2019 (the date of the alleged act referred to in 1.1 above).*

*2.1. Did the Respondent commit the action referred to in paragraph 1.1 above?*

*2.2. If so, did such action constitute a provision, criterion, or practice (PCP)?*

*2.3. If so, did such PCP put or would it put the Claimant and persons who share the Claimant's disability at a particular disadvantage in comparison with non-disabled employees?*

*2.4. If so, was the Claimant put to that particular disadvantage?*

*2.5. If so, was the treatment a proportionate means of achieving a legitimate aim? The legitimate aims relied on by the Respondent are fairness and transparency; equality of opportunities; enforcement of contracts of employment; and/or effective running of the organisation.*

*3.1. Did the Respondent commit the action referred to in paragraph 1.1 above?*

*3.2. If so, did that amount to unfavourable treatment?*

*3.3. If so, did the following arise in consequence of the Claimant's disability: the Claimant declining to get back to her substantive role in Radio in 2019?*

*3.4. If so, was that treatment done because of the thing arising in consequence of the Claimant's disability?*

3.5. *If so, did the Respondent know, or ought it reasonably to have known, that the Claimant was disabled at the material times?*

3.6. *If so, was such treatment a proportionate means of achieving a legitimate aim? The legitimate aims relied on by the Respondent are fairness and transparency; equality of opportunities; enforcement of contracts of employment; and/or effective running of the organisation.*

4.1. *Did the Respondent know, or ought it reasonably to have known, that the Claimant was disabled at the material times?*

4.2. *If so, did the Respondent commit the action referred to in paragraph 1.1 above?*

4.3. *If so, did such action constitute a provision, criterion, or practice (PCP)?*

4.4. *If so, did such PCP put the Claimant at a substantial disadvantage in comparison with non-disabled employees?*

4.5. *If so, did the Respondent know or ought it reasonably to have known of that disadvantage?*

4.6. *If so, did the Respondent fail to make reasonable adjustments for the Claimant, namely: on 13 September 2019, permit the Claimant to move to another team?*

*Victimisation s 5 of list of issues*

5.1. *Did the Claimant perform a protected act by complaining of “gender-related complaints” in her grievance of January 2017?*

5.2. *If so, did the Respondent commit the action referred to in paragraph 1.1 above?*

5.3 *f so, did that constitute a detriment?*

5.4. *If so, was it done because of the Claimant’s protected act?*

14. In terms of 3.1 of the list of issues the claimant said that the respondent insisted not to consider her condition and that they instigated a disciplinary process against her. The respondent’s representative submitted that this was not pleaded and referred to Employment Judge Heath’s order (see page 124 of the Hearing Bundle). The claimant was given permission by Employment Judge Heath to amend her claim, solely to the extent that the decision not to allow the claimant to move teams in September 2019 is claimed to be unfavourable treatment arising from her disability. Having heard both

parties submissions, we therefore did not consider it appropriate to include the additional matter raised by the claimant in the list of issues.

15. Prior to this hearing the claimant and the respondent each sent to the Tribunal a separate Bundle of Documents and we were also provided with a file of witness statements (containing four witness statements in total).

*Claimant's postponement application made on 16 November 2022*

16. Upon the claimant's application to postpone this hearing made at the outset of the hearing orally on 16 November 2022 and upon hearing oral submissions from the claimant (which we considered were informative and very ably made) and the respondent's representative, the claimant's application to postpone the Final Hearing (which was listed for 3 days) was refused.
17. We considered the Tribunal's previous case management orders and the directions made by Employment Judge Klimov and Employment Judge Stout. We also took into account Employment Stout's order of 14 November 2022 requiring the respondent to send any opening submissions to the claimant before the start of the hearing and the fact that those submissions were provided on the morning of the first day of the hearing (including in relation to the claimant's comments that they did not address her request for information made on 04 November 2022 and that the respondent's defence was not clear from her perspective). We considered that the claimant would be able to make any points she wishes to make in relation to the respondent's defence and the answers provided to her questions within the respondent's opening submissions when she asks questions to the respondent's witnesses in cross examination and when she presents her oral closing submissions at the conclusion of all the evidence.

18. We also took into account that the claimant said during her submissions that she was not well. We had not received any medical evidence to show that she was not capable of participating in the hearing. We indicated that we would consider any required reasonable adjustments at the outset of the hearing to facilitate the claimant's participation in this hearing . We also advised the parties that we would shortly be adjourning the hearing to read the documents for the rest of the first day of the hearing and we will possibly require additional reading time on the second day of the hearing. We further advised that this allows the claimant ample time to review the respondent's opening submissions and to undertake any research or seek advice if she wanted to do so.

19. Employment Judge Klimov had previously rejected the claimant's request for a stay of proceedings on the basis of the claimant's ongoing EAT appeal and he set out his reasons in detail in his directions dated 05 October 2022. We did not consider that there was any material change of circumstances since that date. In any event, we did not conclude that a postponement was necessary in light of the claimant's EAT appeal.

20. We considered the overriding objective (Rule 2 of the ET Rules), and we concluded that a postponement was not necessary or proportionate. The claimant's claim was presented in 2020 and it is in the interests of justice for the claim to proceed to avoid further delay (which could affect the quality of the witness evidence and cause prejudice to the respondent). Any prejudice to the respondent was outweighed by any prejudice to the claimant. In addition we concluded that the circumstances in Rule 30A of the ET Rules are not made out and there were no exceptional circumstances.

*First day of the Final Hearing – the procedure*

21. The Employment Judge then set out the procedure including the reading time we will require, the order of witnesses, an explanation of



the evidence process (including witness statements being taken as read and evidence in chief, cross examination, and re-examination), and directions were made (by agreement) that the respondent will make their oral submissions first and then the claimant second.

22. Parties were advised that if there was adequate time remaining the Tribunal may give an oral judgement with reasons (and that parties could apply for written reasons during the hearing or within 14 days from the date that the Judgment is sent to the parties). The Employment Judge asked the claimant if she required any reasonable adjustments, but she repeatedly replied that she simply wanted the hearing to be postponed. The respondent's representative did not suggest any reasonable adjustments that required to be made in relation to the claimant or the respondent's witnesses. In any event it was indicated to the parties that the Tribunal will try to ensure that there was a 10-15-minute morning break, 1 hour lunch break and 10–15-minute afternoon break each day to assist the claimant. The Employment Judge also indicated that the claimant may ask at any time for further breaks if required.

23. We then adjourned the hearing at 1.32pm on 16 November 2022 until 11.00am on 17 November 2022 to enable the Tribunal to read the documents and to allow the claimant an opportunity to review the respondent's opening submissions and to seek advice if necessary.

*Claimant's postponement application made on 17 November 2022*

24. The claimant made an application by way of an email sent to the Tribunal on 17 November 2022 at 10.06am and further documents were sent at 11.07am. The claimant did not attend the hearing on 17 November 2022 (which was due to start at 11.00am). The hearing was convened at 11.19am and it was adjourned at 11.25am to allow the respondent an opportunity to consider the claimant's postponement application. The respondent's representative replied to the application by email setting out its position at 11.39am (a copy of an extract from

IDS and the Presidential Guidance was attached) and the hearing resumed at 11.49am to consider oral submissions in terms of the claimant's application. Although the claimant was not in attendance, the respondent's representative provided oral submissions which the Tribunal found to be informative.

25. We noted that the claimant made an application for an adjournment on 16 November 2022 which was not granted. That application was an oral application made at the outset of the hearing and we gave oral reasons for refusing the application during the first day of the hearing. There were also directions issued by Employment Judge Klimov and Employment Judge Stout in relation to the claimant's previous applications which we considered.

26. The claimant in her application of 17 November 2022 sought to point out that this hearing should not be re-listed as her EAT appeal is due to be listed for a Full Hearing. The claimant previously applied for a stay of proceedings and Employment Judge Klimov declined to grant that application. Additionally, one of the grounds of the claimant's application made to us on 16 November 2022 was the ongoing EAT proceedings, and as we stated in our reasons in refusing the previous application, we did not consider that it was necessary to postpone the hearing as a result of the claimant's EAT appeal.

27. We took into account that the claimant's application stated that her situation deteriorated after the hearing was adjourned on 16 November 2022 and she attended Ealing Hospital. Whilst the claimant stated that she was not fit to represent herself at the hearing, she did not indicate any details about her condition and when she would be likely to be in a position to attend this hearing (or a Final Hearing on any future dates in the event that her postponement application was granted).

28. We reviewed the medical documents provided by the claimant. The hospital triage notes indicated that she had presented with symptoms of depressive disorder including low mood and suicidal ideation. Her physical observations were recorded as normal, the psychiatric team saw her, and she was considered safe for discharge and for any follow up to take place via the claimant's General Practitioner.
29. We also considered the *Presidential Guidance – Seeking a Postponement of a Hearing* and the fact that although the medical evidence from the hospital indicated the claimant's symptoms and clinical observations, it did not include a statement that in the opinion of the medical practitioner the claimant was unfit to attend the hearing, the prognosis of the condition, and an indication of when that state of affairs may cease (see examples number 1 within the Presidential Guidance). We therefore considered that the evidence presented by the claimant in support of her application was not in accordance with the requirements within the Presidential Guidance. We took into account that the burden of proof was on the claimant to satisfy the Tribunal that a postponement was necessary and proportionate in the circumstances (and we were not so satisfied).
30. We did not accept the claimant's contention that any prejudice to the respondent will not exceed the prejudice to the claimant if the Final Hearing was re-listed after the EAT hearing. It was significant that the allegations in this case dated back to September 2019 (there were also matters referred to in the claimant's witness evidence from several years prior to this), the respondent had prepared their witness evidence, the respondent's witnesses were in attendance at the hearing (ready to give evidence), and solicitors and counsel had been instructed for the hearing. If this hearing were postponed not only will the respondent suffer prejudice in terms of incurring further time and costs in defending the claim, but we were also concerned that witnesses' ability to recall the evidence may be further impacted.

31. We considered the Court of Appeal's guidance in *Teinaz v London Borough of Wandsworth* 2002 ICR 1471, CA and various other authorities both of the Court of Appeal ("CA") and EAT (please see extract from IDS Employment Law Handbooks Volume 5, Chapter 13 relating to postponements and adjournments and ill health of parties) and the overriding objective (Rule 2 of the ET Rules). The Court of Appeal suggested in *Teinaz* that if a medical practitioner has advised a litigant not to attend the hearing on the ground of ill health, then the person cannot reasonably be expected to attend and further that the Tribunal is entitled to be satisfied that the inability of the litigant to be present is genuine (and the onus is on the party making the application to prove the need for such adjournment). However unlike in *Teinaz*, the claimant's medical evidence did not indicate that the claimant should not attend the hearing.

32. We also considered the case of *Andreou v Lord Chancellor's Department* [2002] IRLR 728, CA in which the Tribunal provided the claimant with a further limited opportunity of making good the deficiencies in terms of her medical evidence and the Court of Appeal's reasoning that it was necessary to balance the fairness between the claimant and the respondent (and anyone else named in the accusations). The respondent's representative invited the Tribunal in his submissions to provide the claimant with a further limited opportunity during the course of 17 November 2022 to send additional medical evidence while dismissing the application to enable the claimant to make a fresh application if she chooses to do so.

33. The respondent's representative also suggested that the adjournment on the afternoon of 17 November 2022 will provide the claimant with a further opportunity to review the respondent's opening submissions and to seek advice if necessary.

34. For the above reasons, whilst we rejected the claimant's application, taking into account the content of the claimant's application and the supporting medical evidence (and the impact of the claimant's non-attendance), we decided to adjourn the hearing for the remainder of 17 November 2022 at 12.50pm to allow the claimant a further limited opportunity to obtain additional medical evidence and to make a further postponement application if she wished to do so. We made our decision in those terms and our decision was communicated to parties in writing at 1.36pm. We gave oral reasons for our decision at 2.46pm (the claimant was not in attendance). The hearing was adjourned at 2.55pm to allow the claimant a further limited opportunity to obtain additional medical evidence in accordance with the Presidential Guidance and to make a further application if she wished to do so.

35. The directions issued to parties that afternoon were in the following terms:

*"Dear Miss Hassan*

*Employment Judge Beyzade has directed me to write to you to confirm the outcome of your application which is as follows:*

- 1. Upon application by the claimant to postpone the hearing made in writing on 17 November 2022; upon the respondent objecting to that application; upon considering the content of the claimant's application and the attached supporting evidence; and upon hearing oral submissions from the respondent's representative, the claimant's application for a postponement is dismissed. The Tribunal's reasons are reserved and will be announced to parties at **2.30pm on 17 November 2022. Parties must log-in to the hearing using the details provided by the Tribunal at 2.30pm this afternoon.***
- 2. Thereafter, the Tribunal will use any additional time this afternoon as further reading time and the hearing will start tomorrow morning at 10.00am. This will also allow the claimant a further opportunity to obtain medical evidence in compliance with paragraph 1 of the Examples set out in the Presidential Guidance at page 2 which states as follows:*

*"When a party or witness is unable for medical reasons to attend a hearing. All medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned. Where medical evidence is supplied it should include a statement from the medical practitioner that in their opinion the applicant is unfit to attend the hearing, the prognosis of the condition and an indication of when that state of affairs may cease."*

- 3. (if so advised) the claimant may make a further postponement application with supporting evidence as indicated in the Presidential Guidance and any such*

*application may be heard when we reconvene the hearing tomorrow (18 November 2022) at 10.00am.*

4. ***For the avoidance of doubt, if no further application for a postponement is made (and granted by the Tribunal), following any adjournment this afternoon, the hearing will continue tomorrow, 18 November 2022, at 10.00am.***

*Respondent's application made on the Morning of 18 November 2022*

36. Following two emails sent from the claimant prior to the start of the hearing on 18 November 2022 (at 10.00am) the respondent applied to postpone the hearing until 2.00pm to allow the claimant additional time to send further medical evidence to the Tribunal.

37. We determined that upon the claimant sending two emails to the Tribunal on 18 November 2022 indicating that she intended to obtain additional medical evidence and to make a further application for postponement, upon the respondent's representative's application to postpone the hearing until 2.00pm on 18 November 2022 to allow the claimant a further opportunity to obtain medical evidence; and upon the Tribunal being satisfied that it is in accordance with the overriding objective (Rule 2 of the ET Rules) to grant the claimant additional time to obtain further medical evidence, the hearing was adjourned at 11.03am (until 2.00pm on 18 November 2022). We indicated that in the event that the claimant did not make an application with supporting evidence (and that application is not granted) or (in the absence of any application being made and granted by the Tribunal) if the claimant failed to attend the hearing, the hearing would proceed at 2.00pm in the claimant's absence. Those directions were issued by the Clerk to the Tribunal to parties in writing at 11.23am on 18 November 2022.

*Claimant's postponement application made on 18 November 2022*

38. The claimant made a further postponement application at 1.12pm on 18 November 2022 which was accompanied by a Statement of Fitness to Work, an extract from the claimant's GP records and a letter from the claimant's GP (Dr Vishal Vala) dated 18 November 2022.

39. The respondent's representative submitted that the application should be dismissed on three grounds. Firstly it is no longer appropriate to seek further medical evidence from the claimant as there is no opportunity to do so and he invited us to decide the application on the basis of the medical evidence before us. Secondly he submitted that the medical evidence did not comply with the expectations that the Tribunal set the claimant in the Tribunal's directions issued on 17 November 2022. Thirdly he submitted that on its own terms the medical evidence is not sufficient to justify a postponement.
40. The respondent's representative made detailed submissions in relation to each of those points. He said that the reason he proposed that we do not direct the claimant to obtain further evidence was two-fold. The first reason was that there is no longer any such opportunity within the current listing of the hearing. He also said that the claimant has had ample opportunity to obtain appropriate supporting evidence and she has obtained a detailed letter from her GP. In the Tribunal's order made on 17 November 2022 the expectations of the Tribunal were made clear including the requirement to comply with the Presidential Guidance. He submitted that the case law that was relied on by the respondent during the previous application demonstrated why it was important for the claimant to comply with the Presidential Guidance.
41. He also submitted that the case law suggested that there was a difference between unfitness to attend work and the inability to attend a hearing. The claimant had not complied with the Presidential Guidance, and he submitted that the Tribunal should be wary in terms of the evidence that has not been provided. He pointed out that the claimant could have shown her GP the Tribunal's directions. He also relied on all his submissions from his reply to the claimant's application on 17 November 2022 including in relation to the law, the test to be applied and the background and the context of the application.

42. He contended that the claimant gave evidence of her physical symptoms by way of her medical notes. However at the hearing on 16 November 2022 she displayed no physical evidence of such presentation, and he invited us to be circumspect. He commented that the fit note simply says that the claimant is not fit for work. The consultation note from 16 November 2022 is incorporated in the letter from the claimant's GP. That letter was an opportunity for the claimant's GP to record any relevant points relating to the claimant's medical condition and her application. He also submitted that prior to October 2022 the claimant had not attended her GP about depression for a period of some 2 years. There was no mention of the Employment Tribunal or the process in respect thereof in her recent medical notes prior to 16 November 2022.

43. He also submitted that the 16 November 2022 GP note does not take the Tribunal further than what the Tribunal already knew from the claimant's hospital records. He stated there was no new information in the letter from the GP. The letter from the GP dealt with two matters namely that the claimant is extremely anxious, and that the GP would be grateful if she can be supported. The GP did not provide any opinion in terms of any method of support. Moreover he says the claimant was offered support by way of reasonable adjustments from the Tribunal.

44. He further submitted that the letter did not provide any prognosis and although the claimant may say this could be inferred from the fit note, that fit note simply states the claimant is not fit for work. He repeated his submissions about the requirements of fairness to both parties, the passage of time, costs, the circumstances of the application and that this was the claimant's fifth attempt to delay this hearing. The respondent's representative said that the respondent took matters relating to the claimant's mental health seriously, but, having regard to



all the circumstances and the legal test, the claimant did not come close to justifying her application.

45. The Employment Judge enquired whether there were any alternative options to consider such as making an unless order. The respondent's representative said it became a self-fulfilling exercise simply by taking up time and costs unnecessarily. He pointed out that this is not an issue of compliance with orders. He submitted that the claimant had not discharged the burden on her in terms of her application and in addition she had failed to turn up and give evidence in support of it.

46. We decided to refuse the claimant's application because we considered that the medical evidence provided by the claimant both on 17 and 18 November 2022 did not assist the Tribunal in terms of determining the matters set out in the Presidential Guidance. Despite giving the claimant a further opportunity, the medical evidence she provided did not state that in the opinion of the medical practitioner the claimant was unfit to attend the hearing, the prognosis of the condition, and an indication of when that state of affairs may cease. We therefore maintained our view that the evidence presented was not in accordance with the Presidential Guidance. We took into account that the burden of proof was on the claimant to satisfy the Tribunal that a postponement was necessary and proportionate in the circumstances and we were not so satisfied. We took into account the substantial delay and further costs that would be incurred. The balance of prejudice was in favour of the respondent, and we had continuing concerns that the ability of witnesses in this case to recall evidence was likely to be impaired by any further delay. We considered the overriding objective (Rule 2 of the ET Rules), and we concluded that a postponement was not necessary or proportionate in the circumstances.

47. The respondent's representative made an application for the claim to be dismissed in accordance with Rule 47 of the ET Rules on the basis of the claimant's non-attendance at the hearing.

48. Thereafter, we adjourned the hearing between 2.19pm and 3.20pm. The adjournment was to provide the claimant with a further opportunity to attend the hearing prior to hearing the respondent's application.

49. We issued the following directions which were sent to the parties in writing during the adjournment:

1. *"The application made by the claimant for postponement of the Final Hearing sent to the Tribunal on 18 November 2022 with further supporting medical evidence is refused.*
2. *The hearing is currently adjourned. The hearing will recommence at 3.20pm on 18 November 2022 and both parties must attend at that time promptly. If the claimant fails to attend the hearing at 3.20pm, the hearing will proceed in the claimant's absence.*
3. *The respondent's representative has made an application for the Tribunal to dismiss the claimant's claim in accordance with Rule 47 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. That application shall be heard when the hearing resumes at 3.20pm today (18 November 2022)."*

50. Those directions were issued to parties in writing by the Clerk to the Tribunal at 2.52pm on 18 November 2022.

*Respondent's application for claimant's claim to be dismissed*

51. The claimant did not attend the hearing when the hearing was reconvened at 3.39pm on 18 November 2022.

52. The respondent's representative applied to dismiss the claimant's claim pursuant to Rule 47 of the ET Rules.

53. He submitted that the claimant was not present or represented, and the respondent invited the Tribunal in the circumstances to dismiss the claim pursuant to the Tribunal's powers under Rule 47 of the ET Rules.

54. The grounds of the application were that the conditions set out in Rule 47 of the ET Rules were met. The respondent's representative further submitted that the Tribunal now had the discretion to dismiss the claimant's claim or to proceed with the hearing in the claimant's absence having regard to any information about any reasons for her absence. He stated that the respondent had analysed the reasons for the claimant's absence at some length and he contended that the claimant did not have a good reason for not attending the hearing. He averred that in relation to the series of claims which the claimant brought, she bore the primary burden of proof and that the claimant had to prove facts from which in the absence of any other explanation a contravention of the EqA had occurred. He pointed out that the standard of proof is on the balance of probabilities. The claimant had not attended the hearing to give evidence in order to discharge that burden. In the circumstances he submitted that it was the appropriate course for the Tribunal to dismiss the claim under Rule 47 of the ET Rules.

55. We set out the relevant procedural history relating to this claim above.

56. There was no appearance by the claimant (and the claimant was not represented) at the Final Hearing on the 17 and 18 November 2022. This was despite the Tribunal's directions sent to the parties including the directions sent at 2.52pm on 18 November 2022 advising the claimant that if she failed to attend by 3.20pm the hearing will proceed in her absence.

57. On the Tribunal's directions the Clerk checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Hearing after the Tribunal's directions were issued to parties at 2.52pm.

58. On the Tribunal's direction the Clerk attempted to communicate with the claimant on the telephone number provided by the claimant for that

purpose, at approximately 3.00pm. The Clerk was not able to communicate with the claimant, but she left the claimant a voicemail message advising her about the terms of the email that was sent to her at 2.52pm. The claimant was also sent the directions referred to above by the Clerk at 2.52pm requiring the claimant to log-in and attend the hearing by 3.20pm and in default of which the Hearing will proceed in her absence.

59. At 4.04pm and in light of the claimant's unexplained non-attendance and in the absence of a good reason (which was satisfactory to the Tribunal), and on the respondent's application, the Tribunal dismissed the claimant's claim in terms of Rule 47 of the ET Rules. We took into account the nature of the claimant's claims, the issues that the Tribunal were required to investigate and determine (recorded earlier in this Judgment), the burden of proof provisions in relation to the claimant's claim that are set out in section 136 of the EqA (the claimant had not attended days 2 or 3 of the hearing to discharge any obligation placed upon her), and the procedural history relating to the claim. We considered the overriding objective (Rule 2 of the ET Rules).

Employment Judge B Beyzade

Dated: 07 January 2023

Sent to the parties on:

09/01/2023

For the Tribunal Office