



EMPLOYMENT TRIBUNALS

Claimant: Mr D Sharkey

Respondents: ACE Scaffolding (M/CR) Ltd
ACE Scaffolding LLP

Heard at: Liverpool **On:** 22 February 2023

Before: Employment Judge Horne

REPRESENTATION:

Claimant: Did not attend and was not represented

Respondents: Did not attend and was not represented

Following a preliminary hearing by telephone:

JUDGMENT

The claim is dismissed.

REASONS

1. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides:
“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim... Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”
2. The power in rule 47 must be exercised in accordance with the overriding objective in rule 2. The overriding objective is to deal with cases fairly and justly. This includes avoiding delay and acting proportionately.
3. This is the third preliminary hearing that the claimant has not attended.
4. Following the previous hearing, Employment Judge Newstead-Taylor caused a detailed case summary to be sent to the parties. The case summary included the following passage:

“The Tribunal considered whether or not to dismiss the claimant’s claim for non-attendance in accordance with Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Tribunal has a discretion in this regard. The Tribunal weighed up, on the one hand, the claimant’s failure to attend a second hearing against, on the other hand, the known significant ill health difficulties of the claimant’s partner that had resulted in previous postponements..... In all the circumstances and considering matters in the round, the Tribunal decided not to dismiss the claimant’s claim, but, subject to the orders below, to relist the Preliminary Hearing.”

5. On receipt of that order, the claimant cannot have been in any doubt about the potential consequences of failing to attend a preliminary hearing. Employment Judge Newstead-Taylor made it clear that the tribunal had a discretion to dismiss a claim for non-attendance.
6. On 28 October 2022, the tribunal wrote to the claimant, indicating that Employment Judge Holmes was considering striking out his claim because it was not being actively pursued.
7. The claimant replied the same day, apologising and stating that he had “totally forgotten”.
8. There was an exchange of e-mails in which the tribunal informed the claimant that it could not give him advice, but did provide details of sources of advice that were available to him.
9. On 1 December 2022, the claimant e-mailed the tribunal to say:

“I need help with getting paperwork ready for this hearing , as now hmrc have taken half my weekly wage as they say I owe them. But I have said time and time again that I have all my pay slips and bank statements to prove that I have had paid tax ,insurance and pension. Its ACE that has somehow not paid them after deducting from myself. No one is listening. I suffer from bad depression and PTSD and with now having to pay tax twice plus penalty which is not my doing I don't know if I carry on with living .I've spoke to my partner who is very poorly as I've stated and been only speaking to her saying I can't go on like this anymore.”
10. The matter was referred back to Employment Judge Holmes, who caused two documents to be e-mailed to the claimant on 13 January 2023.
11. One of the documents was a letter in these terms (with original emphasis):

“Employment Judge **Holmes** has decided that the **claimants** claim will not be struck out, one further case management preliminary hearing will be listed, for which the claimant **must** be prepared, and which the claimant **must** participate in.”
12. The other document informed the claimant of the date, time, and dial-in code for the hearing. (The time was later altered to 2.15pm, but nothing turns on that – the claimant has not said that he tried to dial in at 10am.)
13. The claimant did not dial in to today’s hearing.

14. At my request, the tribunal clerk telephoned the claimant at 2.19pm. She had a conversation with him, during which he told her:
 - 14.1. That he was in Ireland
 - 14.2. Further details of his wife's medical condition and his own mental health
 - 14.3. That he had found it hard to get his paperwork together
 - 14.4. That he had a poor telephone signal
 - 14.5. That he had not prepared for the hearing
 - 14.6. That he had e-mailed the tribunal with a postponement request; and
 - 14.7. That he believed that he had sent his e-mail last week.
15. The claimant did not say that he was going to connect to the hearing.
16. I could not find any postponement request from the claimant in the tribunal's e-mail inbox.
17. I did not think any further enquiries were practicable.
18. Having taken this information into account, my view is that the overriding objective would be best achieved by dismissing this claim. It has dragged on since 2020 and further delay should be avoided. The claimant must have known of the importance of preparing for today's hearing and attending it. He knew about the consequences of non-attendance. His health and his wife's health are important considerations, but they have already been taken into account more than once before in deciding not to dismiss his claim or strike it out. The fairest course is to dismiss the claim now.

Employment Judge Horne
Date: 22 February 2023

SENT TO THE PARTIES ON
28 February 2023

FOR THE TRIBUNAL OFFICE