



EMPLOYMENT TRIBUNALS

Claimant: Mrs R Kaur

Respondent: David Lloyd Leisure

Heard at: Birmingham (CVP) **On:** 25 May 2023

Before: Employment Judge Edmonds

Representation

Claimant: Did not attend

Respondent: Ms A Niaz-Dickinson, counsel

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVP (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

JUDGMENT

1. The claimant's claims are dismissed.

REASONS

1. This was a hearing to consider whether the claim was in time or not, and/or whether to allow the claim to be presented out of time if it is not.
2. The claimant failed to attend the hearing. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules") states:
"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. 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."
3. It is also open to the Tribunal to postpone the hearing in line with its general case management powers.

4. The claimant did not provide advance notification that she would not be attending the hearing and did not provide any reason for her non-attendance. The Tribunal sought to contact the claimant by telephone, leaving her a voicemail and making clear that if she did not dial into the hearing by 10.30am then the Judge would decide whether to dismiss the claim or proceed in her absence. In addition, an email was sent to her, reiterating this and further explaining that, in the event there was a reason for her non-attendance, she should explain what it was and apply for a postponement.
5. I reviewed the file and noted that, despite the Tribunal having written to the claimant on three occasions, once on 9 August 2022 and twice on 8 October 2022, requesting information from her, she had not responded. In addition, the respondent's representative confirmed that they had received no communication from the claimant since receipt of her claim form.
6. I could see that the claimant had been sent notification of the hearing, along with a reminder email containing dial in details.
7. In light of the above, I had serious concerns that the claimant did not appear to be actively pursuing her claim. She had not provided any reason for her non-attendance, nor requested a postponement. I was concerned, that if I postponed the hearing, she would simply not attend again and this would put the respondent to additional cost along with the additional Tribunal resources involved.
8. In addition, the claim is on the face of it out of time. The purpose of today's hearing was to determine whether the claim should be permitted to proceed. In the event that the claim was not submitted within the primary time limit (as appears to be the case), the burden would be on the claimant to show that it was not reasonably practicable for her to have brought her claim within the time limit. She has provided no explanation for why she has not done so and if we were to proceed in her absence then she would not be able to satisfy the Tribunal that it was not reasonably practicable when we have nothing to say why it was not.
9. Therefore, having regard to the Overriding Objective at Rule 2 of the ET Rules, in particular to avoid delay and to save expense, I decided that the appropriate course of action was to dismiss the claimant's claim. I gave that judgment orally at the hearing, but as the claimant was not present, I have set out my reasons here.

Employment Judge Edmonds

Date 25 May 2023