



EMPLOYMENT TRIBUNALS

Claimant: Miss A Jeffery

Respondent: Ms N Olaiya

HELD AT: Bury St Edmunds (via CVP) **ON:** 7th June 2023
BEFORE: Employment Judge Anderson

REPRESENTATION:

Claimant: No Attendance
Respondent: Ms Sleep (Solicitor)

JUDGMENT

1. If the Claimant's email of 6th June is treated as an application to postpone, that application is refused.
2. The claim of unpaid holiday pay is not well founded and is dismissed.

Employment Judge Anderson

7th June 2023

JUDGMENT SENT TO THE PARTIES ON
26 June 2023

T Cadman
OFFICE

FOR THE TRIBUNAL

Reasons

1. This matter came before me today for a full hearing in respect of the Claimant's claim for holiday pay. The claim for unfair dismissal had previously been struck out.
2. The Claimant did not attend the hearing. The Respondent did attend and was also represented by Ms Sleep, a solicitor acting pro bono.
3. On 6th June 2023 (yesterday) the system records the Claimant having made a telephone to the Tribunal referring to a bereavement. This was then followed up with an email at 16.57 stating

"I am not able to attend the tribunal as I have had a sudden death in my family I have already contacted the tribunal to let them know if this and have also emailed"
4. That email was not copied into the Respondent as required by Rule 92. No supporting evidence was attached.
5. On the face of it, the email is not an application to postpone. However, applying the most generous interpretation, I decided that it should be treated as one.
6. I gave Ms Sleep the opportunity to take instructions. Having done so, she opposed the application. She referred to the near total failure by the Claimant to actively pursue the case to date. There had been no compliance with orders, no evidence supplied and no witness statement.
7. Ms Sleep also indicated concern regarding the late nature of the application which did not sit well with the sole communication that she had received from the Claimant. Ms Sleep took time to detail the multiple attempts that had been made to contact the Claimant with no response, including a hand delivered letter.
8. The communication that was received was an email dated 5th June at 00.24. That letter refers to the conduct of the Respondent in terms the 'language, nature and frequency of her communication'. She states 'I am now considering if it is more appropriate to address this more egregious issue first'. She then asks that there is no more direct contact from the Respondent.
9. Ms Sleep identified that the Respondent was a vulnerable individual. She was the cared for person by the Claimant. She has found this litigation to be incredibly stressful.

10. Ms Sleep also relied upon Rule 30A inserted into the 2013 Rules regarding late postponement applications and the need for exceptional circumstances as it was made less than 7 days prior to the hearing.
11. I decided not to postpone the matter.
12. Tribunal resources are finite. Arguably, they are stretched beyond breaking point. The need to have cases dealt with is an important, but not overriding consideration.
13. I do have doubts regarding the application, the timing and the lack of evidence in support, compounded by the near total failure to engage previously. The email of the 5th June has the hallmarks of avoidance, i.e. addressing tangential matters rather than focusing on the issue of the claim, in the context of orders having already been breached and the hearing two days away.
14. The Respondent is a vulnerable individual and I am entitled to take into account the impact of this case being postponed on her against the Claimants lack of engagement and failure to attend today.
15. Having decided to proceed with the case, the height of the Claimant's case is her ET 1, there being no witness statement or supporting evidence in support of her case.
16. The Claimant bears the burden of proof to prove her claim. I would want to hear from her in respect of a) the holiday year b) leave taken c) leave taken but unpaid d) unpaid leave at the end of her engagement.
17. The Respondent disputes the Claimants case on both employment status and substantive Working Time Regulations grounds.
18. This is not a case in respect of which I am content to proceed on the basis of the Claimant's pleading alone. Oral evidence is required, ideally supported by documentary evidence. The Claimant has not provided this, the Respondents denials, particularly in terms of paid leave taken and other sums also paid to the Claimant are supported by a witness statement.
19. I therefore dismiss the claim of holiday pay on its merits.

Employment Judge Anderson

7th June 2023