



EMPLOYMENT TRIBUNALS

London South Employment Tribunal
21st June 2023 (in person)

Claimant: Prince Maduabuchukwu Ojiaku

Respondent: ABM Facility Services UK Ltd

Full merits hearing

Before: Judge M Aspinall (sitting alone as an Employment Judge)

Appearances: Mr M E Ukwuoma (representative/advocate for Claimant)
Miss N Dinnes (Solicitor for Respondent)

JUDGMENT

1. **The claim for unfair dismissal brought by the Claimant against the Respondent is struck out** under **Rule 37(1)(b)** and **Rule 37(1)(e)** of The Employment Tribunals Rules of Procedure 2013 (as amended) for the reasons which follow.
2. The Claimant shall pay the costs of the Respondent in **the total amount of £1,000**.

REASONS

3. This claim came before me for a final full merits hearing, for the first time, on 18 January 2023. At that hearing, the Claimant and his representative had multiple issues which led to a situation where I had no fair option other than to adjourn the hearing to a new date and to make case management orders.
4. The issues at the first hearing were:
 - The Claimant and his representative did not join the hearing until more than 30 minutes had passed; this was due to technical issues which they encountered with the CVP (Cloud Video Platform) system.
 - The Claimant's representative began to refer to a bundle which they said had been provided by them; the Respondent's Solicitor confirmed that this had been incorporated into the final hearing bundle and provided to the Claimant and his Representative by email on 13 October 2022, 21 October 2022, 15 November 2022, 7 December 2022, and 12 January 2023. It was sent again during the hearing as the Claimant's Representative denied receipt. On receiving the email during the hearing, the Claimant and his representative proceeded to print out the entire bundle - again taking considerable time.

- The Claimant and his representative denied receipt of the CCTV footage relied upon by the Respondent as demonstrating the specific actions of the Claimant which they say led to his dismissal on 18 March 2022. The Respondent's Solicitor confirmed that this had been sent to them, as links contained in an email, on 11 November 2022, 7 December 2022, 12 January 2023 and in the email which had been sent during the hearing. The Claimant and his representative continued to deny receipt of those links.
 - I noted that the Tribunal had received the same links from the Respondent and that, as I was able to view the footage, they had obviously worked.
5. Having adjourned the hearing I made various orders for the further conduct of the case - including, particularly, that the hearing would be resumed in person (not via CVP) at Croydon in due course.
 6. Yesterday afternoon, by email (copied to the Respondent) the Claimant's representative made an application for the hearing today to be postponed on the single ground that the Claimant was too unwell following surgery on his leg in May 2023. The Respondent, in writing, stridently objected.
 7. This morning, the Claimant attended the hearing with his representative. They renewed the application to adjourn on the basis that he was too unwell following his recent surgery. I challenged the reason on the basis that the surgery in question was - in fact - on 24 February 2023 and was on the Claimant's left big toe. The medical evidence suggested this was a bunion.
 8. The Claimant averred that the surgery was necessary because of an injury to his right leg that he had sustained at work, for the Respondent, on 14 July 2021. The medical records provided by him show a consultation with a medical professional at which they consider the problem may be Plantar Fasciitis and in which they confirm that the Claimant reported having had no accident or injury recently.
 9. The Presidential Guidance is clear that, where medical conditions are pleaded as a reason to postpone, the party requesting the postponement must provide some medical evidence and signed evidence from a clinician that sets out that the person concerned is unable to attend a hearing, the prognosis and when it is likely to resolve.
 10. The overriding objective requires that cases are dealt with proportionately in terms of time and cost, amongst other things.
 11. The Respondent argued that the application was unreasonable and that it would be unfair and prejudicial to them for an adjournment to be granted.
 12. Considering the history and the conduct of the Claimant and his representative both before the aborted hearing in January, during the aborted hearing in January, since that hearing, yesterday and today, and taking account of the submissions made by the parties (in writing and in person), I was not satisfied that it was reasonable to grant an adjournment.
 13. I gave the Claimant some time to consider how to proceed. On returning, he (himself)

told me that as his solicitor had not attended today, I ought to grant an adjournment and that he would be unable to, and would not, participate in the hearing. I had canvassed this with his representative before making my decision to refuse the application and he had confirmed that the Solicitor had not attended because it had been presumed that his client would be unable to attend and that an adjournment would be granted.

14. It was clear to me that the Claimant and his Solicitor had reached that presumption. It is entirely unacceptable for a party to take for granted that an application for an adjournment will be allowed by the Judge or the Tribunal. Until an adjournment is *actually* permitted by the Tribunal, the hearing must be expected to go ahead as listed.
15. A Legal Officer of the Tribunal wrote to the parties on 11 May 2023 as a 'pre-hearing check'. The letter required the parties to confirm, by 25 May 2023, that they still required a hearing and that they were ready to proceed. It gave the clear warning that failure to respond could lead to the claim or response being struck out.
16. The Respondent replied to that letter, by email (copied to the Claimant's representative), on 24 May 2023. They confirmed that the hearing was still required, that the Respondent was ready to proceed and that one of their witnesses, being due for surgery on 2 June 2023, would attend but may need the Tribunal to be patient with him because of pain and the effects of pain medication.
17. The Claimant did not respond to the Legal Officer's letter in time, or at all.
18. I find that the way the Claimant and those who represent him have conducted this case is some way past the measure of what could properly be considered reasonable. They have not complied with orders, have made last minute applications to adjourn, have failed to prepare for hearings and, today, have taken for granted that I would simply accede to the application to adjourn where no material information had been provided.
19. Therefore, having taken everything into account, I strike out the claims in their entirety as the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious (Rule 37(1)(b)) and because the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (Rule 37(1)(e)).

Costs application by the Respondent

20. The Respondent applied for costs in the sum of £1,824 (net of VAT) in respect of the aborted hearing in January 2023 and a further £2,142 (net of VAT) in respect of the preparation for the hearing today. They sought costs against the Claimant and/or wasted costs against his representative.
21. The Claimant opted to leave the hearing before I addressed this application. He indicated that he was in some pain from his foot and that as his solicitor was not present, he did not want to continue in the hearing. His representative, on the record, was present and I was satisfied that he could address me on any points regarding the application.
22. The Respondent originally made their written application on 19 January 2023 for costs in relation to the aborted hearing and the Claimant's representative replied in a lengthy

letter on 26 January 2023.

23. The Respondent, before, me maintained only the application in relation to the costs for preparing for today's hearing. The sum sought was, therefore, £2,142.00 net of VAT.
24. The Claimant's representative, aside from confirming what was said in their letter of 26 January 2023 and that the Claimant remains unemployed, had nothing further to add.
25. Having struck out the claims because the conduct of the claim by the Claimant had been unreasonable or scandalous or vexatious, I was satisfied that some measure of the considerable costs incurred by the Respondent were reasonably attributable to him.
26. It was, I found, also important that I take account the ability of the Claimant or his representative to pay any costs ordered.
27. I am satisfied that it is just, fair, and equitable for the Claimant to be ordered to pay costs, to the Respondent, in the sum of **£1,000 in total**.
28. Taking into consideration all that I have seen and heard, I am satisfied that the Representative – Mr Ukwuoma – has had some difficulty in managing his client and that it would not be appropriate to make a wasted costs order against him in the circumstances.

Judge M Aspinall
Wednesday, 21st June 2023

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