



EMPLOYMENT TRIBUNALS

Claimant: Miss C Lewis

Respondent: Northern Diver (International) Limited

Heard at: Manchester , in public **On:** 3 July 2023

Before: Employment Judge Holmes
Miss S Howarth
Ms H Sheard

Representatives

For the claimant: Not in attendance or represented
For the respondent: Mr S Lewinski, Counsel

JUDGMENT

It is the unanimous judgment of the Tribunal that :

The claimant's claims are dismissed pursuant to rule 47 of the Tribunal rules of procedure 2013

REASONS

1.The claimant, by a claim form presented on 6 June 2022, brought claims of sex discrimination against the respondent. The respondent defended the claims, and a preliminary hearing was held on 19 August 2022. The claimant was represented at the time that she started the claims by Smooth Commercial Law Limited, and was represented at the preliminary hearing by counsel.

2.The Tribunal made case management orders at that hearing, and listed the final hearing for 3, 4 and 5 July 2023, in Liverpool. One of the orders made was for exchange of witness statements , which was to be completed by 27 February 2023.

3.The claimant did not exchange witness statements, nor was anything further heard from her or her representative by the Tribunal or the respondent until, the Tribunal was informed, 28 June 2023, when, in response to the respondent (which had served its witness statements) chasing the claimant for her witness statement, an email was sent from the claimant's representatives to the respondent's representative, to the effect that they were no longer acting for her, had informed her

of the hearing date, and had advised her to contact the respondent's representative. The claimant's former representative sent a similar email to the Tribunal at 10.19 on the morning of the hearing.

4. On 27 June 2023 the Tribunal had informed the parties (i.e the representatives) that the venue of the final hearing had been changed to Manchester.

5. On the morning of the hearing the claimant did not attend the Tribunal, nor did any representative attend for her. The Tribunal clerk made attempts to contact her by telephone and email, leaving messages for her. There was no response from the claimant by 11.00 a.m., and at that time the Tribunal called the case on. The respondent, through Mr Lewinski, made application, after an adjournment for instructions, that the claims be dismissed pursuant to rule 47 of the Tribunal rules of procedure.

6. He explained the history of the matter as set out above, and submitted that the claimant had not only failed to attend the hearing, but had not taken any steps since being advised by her representative on 28 June 2023 that she would have to carry on her case herself. This was against a background of non – compliance with the Tribunal's orders for exchange of witness statements, and total non – engagement with the process. These defaults were unexplained.

7. He invited the Tribunal, accordingly, to dismiss the claims under rule 47 of the Tribunal's rules of procedure. This rule provides that, if a party does not attend or is represented at the hearing, provided that the Tribunal has first considered all the information which is available to it, after any enquiries that may be practicable about the reason for the party's absence, the Tribunal may dismiss the claim.

8. The Tribunal retired to consider the applications. In some circumstances, where there may be an explanation for a party's non – attendance, a Tribunal will not proceed to dismiss their claims without first giving them an opportunity to proffer any explanation for this default. Here, however, there was not only the non – attendance, but also failure to provide a witness statement by the claimant. This was seriously overdue, and was also unexplained. This led the Tribunal to doubt that the claimant was actively pursuing her claims. Having considered all the information available to it, and having made the enquires referred to above (including, subsequently, an enquiry with the Liverpool Tribunal to confirm that the claimant had not attended there), the Tribunal considers that it should exercise its discretion in this instance to dismiss the claimant's claims. The respondent is entitled to some finality, and to have a determination this day, rather than await anything further that might, or might not, be advanced by the claimant.

9. If the claimant wishes to have this judgment set aside, and her claims reinstated, she must make application for reconsideration of this judgment within 14 days of it being sent to her. Any such application, she will appreciate, will have to address the reasons for both her failure to attend the hearing (or make any communication at all in relation to it), and why she has not exchanged her witness statement. Under rule 71 any such application must be made within 14 days of the judgment being sent to the parties, and copied to the other party.

Employment Judge Holmes

Date: 3 July 2023

JUDGMENT SENT TO THE PARTIES ON

11 July 2023

FOR THE TRIBUNAL OFFICE