



EMPLOYMENT TRIBUNALS

Claimant:

Mr C Whittingham

v

Respondent:

British Airways plc

Heard at: Reading (by CVP)

On: 14 June 2023

Before: Employment Judge Hawksworth

Appearances

For the claimant: No attendance or representation

For the respondent: Ms I Egan (counsel) and Ms C Maydell (solicitor)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – rule 47

The claimant's claim is dismissed under rule 47.

REASONS

1. The claimant Mr Whittingham was employed by the respondent from 1 April 2014 until 17 October 2020. He brought a claim for unfair dismissal. The claim form was presented on 7 December 2020, after early conciliation from 29 October 2020 to 29 November 2020.
2. The hearing of the claim was due to take place on 11, 12 and 13 July 2022, but it had to be postponed for judicial resourcing reasons.
3. The parties were notified on 8 July 2022 that the hearing could not go ahead, and were asked to provide new dates. The claimant did not reply to that request. Notice of the new hearing dates was sent on 16 July 2022.
4. The respondent's solicitor contacted the claimant in the last few days with an amended bundle and a draft list of issues. The claimant did not reply.
5. The hearing today took place by video. It was due to start at 10.00am. The claimant has not attended and is not represented. The clerk spoke to him on the phone. He said he is not able to attend as he has a new job and is at work. He has not said he was unaware of the hearing date; he has told the

clerk that the hearing went out of his mind because he has had a lot of personal issues to deal with and recently started a new job. He has not prepared anything for today.

6. Rule 47 of the Employment Tribunal Rules of Procedure 2013 says what happens if a party does not attend a hearing:

“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.”

7. As an alternative to dismissing the claim or proceeding with the hearing, the tribunal could also postpone the hearing to another day.
8. When deciding what to do, I have to consider rule 47 together with the overriding objective in rule 2 which requires the tribunal to deal with cases fairly and justly, and that includes being fair to both parties.
9. The factors I have considered include:
 - 9.1 In this case the claim is for unfair dismissal. It is now over 2 and half years since the date of dismissal, and that inevitably gives rise to evidential difficulties with memories fading;
 - 9.2 If the hearing were postponed, the new dates would be likely to be some months away. If the delay was as long as the previous postponement, that would mean a hearing in mid-2024;
 - 9.3 The hearing has been in the tribunal and the parties’ diaries for 11 months;
 - 9.4 The previous postponement was not the fault of either party, but the long wait the parties have had for this hearing ought to have meant that they had it at the forefront of their minds. The respondent’s recent communications with the claimant should have reminded him of it if he had forgotten;
 - 9.5 Three witnesses for the respondent have attended today with the respondent’s counsel and solicitor;
 - 9.6 The claimant has not made an application for postponement other than indicating this morning his intention to do so.
10. I considered postponing the hearing to start tomorrow morning. I have decided that would not be fair to the respondent. The claimant has not asked me to do that or suggested that he could attend tomorrow. If the hearing was postponed to tomorrow, this would require the respondent’s representatives and witnesses to attend again with the possibility that the claimant may still not be able to attend and may still not be ready for the hearing. It would also require another day of tribunal time being set aside for the case which may be lost.

11. It is not possible to proceed with the hearing today in the claimant's absence, as it is not clear what he says is the basis for the dismissal being unfair.
12. I have decided that the claim should be dismissed under rule 47.

Employment Judge Hawksworth

Date: 14 June 2023

Sent to the parties on: 12 July 2023

GDJ
For the Tribunal Office

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