



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Miss E James

v

Secretary of State for Justice

Heard at: London Central

On: 18 July 2023

Before: Employment Judge Glennie  
Ms Z Darmas  
Mr F Benson

## Representation:

Claimant: Neither present nor represented

Respondent: Mr T Kirk (Counsel)

## JUDGMENT

The unanimous judgment of the Tribunal is that the claim is dismissed under rule 47 of the Rules of Procedure.

## REASONS

1. The full merits hearing in this case has been listed and postponed on 2 previous occasions. In 2021 the hearing was postponed because of the Claimant's non-compliance with case management orders. In 2022 it was postponed because of the Claimant's ill health.
2. On 12 July 2023 the Claimant applied for a postponement of this hearing, stating that she had been detained in hospital and remained in hospital. She said that she had asked her clinician to provide a supporting letter, that she should be in receipt of this by Friday (14 July) and that she would forward it to the Tribunal.
3. On 17 July 2023 the Claimant's application was referred to Employment Judge Gidney, who decided that, in the absence of any medical evidence, it should be refused.

4. When the case was called on for hearing (by video) at 10.00 this morning, the Claimant was not present. The Tribunal's clerk sent the Claimant an email at 10.00 which read:

"You have a hearing starting this morning – scheduled for 6-7 days – and would be grateful if can log in.

"Please reply to this message so that the Tribunal are aware of any difficulties you may be experiencing."

5. The Tribunal's clerk also checked the Tribunal's general in box and at 10.45 confirmed that no reply had been received to his email at 10.00 and no further correspondence had been received from the Claimant since her email of 12 July.

6. Rule 47 of the Rules of Procedure provides as follows:

*If a party fails to attend or 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 that party's absence.*

7. The Tribunal has explained above the enquiries that were made and the information that was available to it about the reasons for the Claimant's absence.

8. Rule 47 does not require the Tribunal to chose between dismissing the claim and proceeding in the party's absence. The Tribunal could decide to do neither of these, and to postpone the hearing. In the present case, the Tribunal considered that it was not open to it to postpone the hearing, as EJ Gidney had refused the Claimant's application and there had been no material change of circumstances since then.

9. Even if the Tribunal is wrong about that, it would not postpone the hearing in the circumstances. The hearing has already been postponed twice. The Claimant has stated that she is in hospital, but has supplied no supporting evidence of this, in spite of saying that she was expecting to receive this by 14 July at the latest. She has not replied to the clerk's email.

10. Mr Kirk sought the dismissal of the claim. The Tribunal concluded that this was what should be done in the circumstances. All of the complaints in the claim place an initial burden of proof on the Claimant. Proceeding with the hearing in the absence of the Claimant would inevitably lead to the dismissal of the claim, but after a longer hearing which would involve greater use of the Tribunal's resources.

11. The Tribunal also took on board Mr Kirk's observation that it would be open to the Claimant to seek a reconsideration of a decision to dismiss the claim if circumstances arose that would justify this.

12. The Tribunal therefore gave an oral judgment dismissing the claim and closed the hearing at around 11.00 am.
13. Following this, the Tribunal's clerk received a reply to his email to the Claimant sent at 10.00 am. The Claimant's reply, timed at 11.47 am, read as follows:
- "I have been informed that the Tribunal is in receipt of my medical evidence. Please can you confirm whether this has been received.
- "There is a doctor's strike so I have had difficulty in obtaining this evidence to provide to the Tribunal timely.
- "I will forward a copy of this once received.
- "Just to confirm, I am presently unable to attend the hearing due to being detained in hospital."
14. This email was referred to the Employment Judge on receipt. The Employment Judge instructed that a reply should be sent stating that the decision to dismiss the claim had been made before this email was sent, and that it had not therefore been taken into account by the Tribunal when making its decision.

Employment Judge Glennie

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Employment Judge Glennie

Dated: .....20 July 2023.....

Judgment sent to the parties on:

20/07/2023

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For the Tribunal Office