



EMPLOYMENT TRIBUNALS

Claimant
T Booth

v

Respondent
Stephen Stephenson
Julie Gilfeather
Susan Ward
Julie Brooke

PUBLIC PRELIMINARY HEARING

Heard: By CVP in Leeds

On: 31 July 2023

Before: Employment Judge JM Wade Appearance:

For the Claimant: No attendance

For the First Respondent only: Mr Menon, counsel, with Mr Stephenson

JUDGMENT

The claimant's claims disability discrimination complaints against the respondents are dismissed pursuant to Rule 47 upon the claimant's failure to attend or be represented at today's public preliminary hearing.

REASONS

1 Today's hearing arose as follows. There was a telephone hearing on 17 May 2023, which the claimant attended and at which he was supported by his partner, Rachel Dickinson-Sargiesson. Orders were made for the claimant to clarify his claims and the Judge ordered a further case management hearing for today, and that hearing was converted to a public hearing to hear the first respondent's strike out application. Today the claimant had not attended by 10.15am and our clerk telephoned him, but was unable to reach him or to leave a message. At around 10.40 having heard Mr Menon on behalf of Mr Stephenson, I dismissed the claims against all respondents pursuant to Rule 47.

2 The background is this. The claimant was employed by Leeds Teaching Hospital Trust ("the Trust") as a biomedical support worker from December 2017 until his dismissal for capability on 20 November 2022. The first respondent, Mr Stephenson, had confirmed the claimant's dismissal to him in a letter from which the claimant quotes – there were said to be "no reasonable steps which the Trust can

take to assist you to return to work in a reasonable timeframe”. The claimant includes in his case papers that he was bullied while at work, which he says caused his anxiety and depression. He also relies on chronic pancreatitis and FACET joint disease as disabilities underpinning his claims.

3 In addition to this claim, I note that the claimant had also presented complaints of unfair dismissal and disability discrimination in claims with numbers 6000283/2023, 6000287/2023, 6000300/2023, 6000301/2023. Those proceedings also named seven other former colleagues of the Trust as respondents (in addition to the four named in this case). On 13 March 2023 (the claims all having been presented within days of each other around 19 February), and pre-service, a Legal Officer reviewed emails from the claimant to the Tribunal (which were not copied to any of the respondents) of 20 and 22 February. The legal officer directed a letter to the claimant which said, “it appears you wish to pursue the claim 6000397/2023 only. This claim is against 4 respondents and if accepted will be treated as presented on 5 March 2023. Please write to the Tribunal by 20 March to confirm if this is correct, and if not, how you wish to proceed.”

4 On 19 March, the claimant replied, “Hello This is correct”. Those February four claim forms were then treated as withdrawn, and not served (on the eleven former colleagues named). Dismissal judgments were not sent.

5 This claim form and an attachment sent separately was then sent by post to the four named respondents at the postal addresses given by the claimant, with the usual service papers, namely at St James Hospital, Beckett Street, Leeds. Mr Stephenson became aware of the proceedings, sought the papers from the Tribunal and permission was granted for a late response. A holding response was sent on his behalf. Other papers were returned to the Tribunal, having not been able to be delivered by Royal Mail.

6 At the hearing on 17 May, at which Mr Stephenson was represented by Mr Uttley, solicitor, the Judge refused the claimant’s application to join again the seven respondents against whom the claimant withdrew his claims. She also dismissed the unfair dismissal claim against these four respondents on the claimant’s withdrawal (the claimant having agreed that he could only bring such a claim against his employer, the Trust). A dismissal judgment was sent.

7 The claimant then produced and sent to the Tribunal an ACAS certificate from February naming “NHS” as the respondent. On 1 June 2023 an Employment Judge directed a letter to the claimant to the effect that such an email did not equate to a claim having been presented against the Trust, which was discussed in the previous hearing.

8 The claimant in consultation with the first respondent’s solicitor then agreed an extension to the order for him to provide further information about his disability discrimination claims against his former colleagues until 29 June. Late on the evening of 29 June the claimant sent to the Tribunal and the first respondent’s solicitor a raft of information including attachments of his grievance process and outcome. The Tribunal’s electronic file for these proceedings runs to 300 pages or so – the hearing file prepared on behalf of the first respondent today was 90 pages or so, and the difference between them involves duplication on the Tribunal’s file and the underlying evidence or other materials which the claimant has attached to his communications.

9 I should also add that an Employment Judge directed a letter to the claimant and other three respondents by email (the Trust relaying on the last occasion that they had not given their permission for their home addresses to be provided for the purpose of service, but their email being available). That letter on 20 June alerted the

other three respondents to Rule 91, and that a third party order could be made directing the Trust to provide home addresses in order that service could take place. 10 Had the claimant attended today, I may have been considering whether to make such an Order or some other way forward to enable effective service to former colleagues.

11 As to the claims currently before the Tribunal, the Employment Judge had discussed and recorded the factual allegations that appeared to be alleged against Mr Stephenson on the last occasion, sought to understand how this was put as disability discrimination, including discussion of the difficulty of a failure to make reasonable adjustments against a colleague. The broad allegation of past bullying by the other three respondents was also recorded, but again with an order to confirm the dates and details of disability discrimination alleged against them.

12 Had the claimant been able to give the ordered clarity, I could have considered postponing today and/or making arrangements for a further hearing, likely on time limits and/or the preliminary issue of disability. As it is, without the claimant here, and with the paperwork he has submitted (running to something like 100 pages of grievance and other paperwork), I am trying to discern disability allegations without the claimant to assist, and we are not really any further forward.

13 I can see, from what I read, that Ms Gilfeather is alleged to have followed the claimant to the lavatory in June 2020 (I see that from a timeline in the grievance process); I see that the claimant relates that to his FACET joint disease. I also see in the grievance time line that he complained against his other colleagues in connection with file notes, and that he was represented at a grievance hearing in connection with these matters in May 2021 by a union representative. I also see that the Trust gave a full outcome. I pause and also note that the claimant could have presented an ordinary claim of unfair dismissal against his employing trust and/or a disability discrimination complaint about that dismissal – he was clearly aware of the three months less a day time limit in connection with such a claim but he did not do so.

14 I consider in these circumstances whether to proceed with this hearing and determine the respondent's strike out application and/or deposit application. Secondly, as above I consider whether to postpone and hope that clarity can be secured at a postponed hearing. Or thirdly I consider whether to dismiss the claims today pursuant to Rule 47.

15 Deciding the respondent's applications on merit, without the claimant here to explain his position, appears to me to be inconsistent with the claimant's right to a fair opportunity to be heard. I also consider a further postponement incompatible with fairness for the respondents in this case, at this time, who have unclear allegations hanging over them.

16 I have no information about why the claimant has not attended but Mr Menon rightly points me to the claimant's depression/anxiety as a possible explanation. I also observe from the papers that the claimant appears to have been struck by a large number of unfortunate and distressing matters. I read about an injury, a separation and then moving back to be with his partner, that his partner's 20 year old daughter is receiving palliative care, and various other distressing matters.

17 In deciding the course which is in the interests of justice, I bear in mind that a further unfortunate event may have arisen for the claimant to prevent him attending today. There has been no postponement application, but he may have struggled with connectivity or for other reasons today. If there is a very good reason for his failure to attend and to request a postponement, then he can apply to reconsider this judgment.

He will also, however, need to explain how it is in the interests of justice to revoke a judgment in circumstances where the complaints remain as unclear as they were in May, and with the time limit problems involved - allegations relating to respondents two to four appear to have arisen in 2020, and when the claim was presented they appear to be two and half years late in circumstances where the claimant had access to union representation when he was employed and during his grievance process. 18 For all these reasons I consider dismissal pursuant to Rule 47 is the just decision.

19 Postscript: At around 11.45 and an hour or so after I had announced my judgment and the hearing had ended, I was provided with an email sent by the claimant to the first respondent's solicitor and Leeds ET, copied to his partner, who the claimant tells us is a registered nurse. The email said this, "Hi all I am really sorry; my stepdaughter took a bad turn. I am free now, but I'm at the hospital. I'm really sorry that I've only managed to email. Kind regards".

20 The email having arrived after the decision was given, the claimant and his family will no doubt have other things on their minds and they must focus on those. The claimant may wish to consider the matters I set out above in due course and then decide whether he wishes to make any application to re-consider the judgment above. If that comes after the 14 day time limit then I will approach any application for an extension of time on the basis of the evidence and reasons the claimant provides to the Tribunal at that time.

Employment Judge JM Wade

Dated: 31 July 2023