EMPLOYMENT TRIBUNALS

Claimant: Mr S Munteanu

Respondent: Sigma Components (Farnborough) Ltd

Heard at: Reading (via Cloud Video Platform)
On: 7 August 2023

Before: Employment Judge Caiden

Representation
Claimant: Not in attendance
Respondent: Not in attendance

JUDGMENT

The Claimant's application sent via email on Sunday 06 August 2023 at 15:38 to postpone the hearing is refused and the claims are dismissed pursuant to rule 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Relevant background

1. The claim was made by an ET1 presented on 7 November 2022. It relied upon an ACAS Certificate that showed conciliation occurred between 21 October 2022 and 7 November 2022. Much of the ET1 was left blank. There were no employment details given, no details of earnings during employment with the Respondent, no details of what happened after employment ended but the Claimant did tick boxes for race discrimination and stated he was owed "*other payments*" although without providing details of these. The background section of the ET1 was completed in the following terms:

> *- I am Romanian national and I have been discriminated by some of my British colleagues while working*
> *for Sigma Components:*
> *- there is an ASDA close to the…company's site. All my colleagues w…ere allowed to go there during*
> *breaks, I was told I can't go buy what I needed to buy*

- I was forced to do overtime when I didn't want to
- I never got the right pay
- I signed a contract but Sigma has no evidence I worked for them, I have checked my taxes, there are none paid during that period
- I was told by my manager I need to answer my phone everytime he calls, even if I am at home
- I have reported the issue multiple times, to different managers, nothing happened, I didn't even get a reply to my emails or text messages
- 22/09/2022 I have raised a money claim with Sigma, it has been also ignored.

2. The ET3, received on 7 December 2022, defended the claims, and stated the Respondent, who produces components for the aerospace industry and so operates in a highly regulated environment that is subject to auditing procedures, had no records of ever employing the Claimant and that in fact the "*money claim*" was not ignored but dismissed "*by the court on the basis that no cause of action existed*". Its response at paragraph 3 noted the Claimant had not given "*details of claim contain…no information as to the dates of the alleged incidents and no details of the names of his manager and were are therefore unable to investigate the Claimant*[']*s allegations. The ACAS representative indicated that the Claimant allege*[s] *the incidents occurred in 2013*". At paragraph 6 of the response, it stated:

> *We would invite the Tribunal to dismiss Mr Muntenau's claim on the basis that:*
> *-No cause of action is disclosed within the claim.*
> *-The Claimant has not established that he was employed by Sigma Components (Farnborough) Limited.*
> *-The Claimant has not provided dates of employment.*
> *-In the event that the Claimant can establish that he was employed by Sigma Components (Farnborough) Limited any claim falls outside the limitation periods for bringing such a claim.*
> *-This claim is one of a series of claims brought by Mr Munteanu without detail or evidence which have caused the Respondent to expend considerable time and expense in responding to such claims.*
> *-A pattern exists within Mr Munteanu's claims of mak*[ing] *very substantial monetary claims (usually £15,000) and then offering a settlement at a very much lower level (10% of original amount).*

3. As a result of this ET3, the Tribunal listed a Preliminary Hearing to be heard via CVP on 7 August 2023 at 10:00. The notice for which, dated 18 May 2023, specified that "*At the hearing, an Employment Judge will "discuss the application made by the Respondent in paragraph 6 of its response*". In effect therefore the hearing that was due to take place before this Tribunal was of a strike out and/or deposit order nature.

4. Following the above notice being sent, the Tribunal received nothing from the Claimant by way of evidence or submissions dealing with the points made by the Respondent.

5. On 7 August 2022, neither party attended the hearing that was due to take place. The clerk to the Tribunal contacted the telephone numbers on record for both parties on several occasions but with no success.

6. At 10:26 on 7 August 2023, the clerk to the Tribunal had found an email written by the Claimant on Sunday 6 August 2023 at 15:38, it stated:

   Hi,
   Due to medical reasons, I can't attend the hearing. Please postpone it by at least two months.
   Kind regards,
   Sergiu Muntenau

7. The above email was sent as a reply to the Claimant being provided the CVP link on Friday 4 August 2023 at 16:06 (as an aside the time stamp is 17:06 on the email information but that is "CEST", Central European Standard Time so an hour ahead of local time). The Tribunal notes the Claimant's email comes from the same email address as the one on file with the Tribunal and the same one that Notice of Preliminary Hearing mentioned at paragraph 3 was sent to.

Application to postpone

8. Returning to the Claimant's email of 7 August 2023, that was an application to postpone that was sent less than 17 hours before the hearing was due to commence. The relevant rule for postponements in this case is rule 30A(2) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("ET Rules"). Rule 30A ET Rules states:

   30A.— Postponements
   (1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.
   (2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—
      (a) all other parties consent to the postponement and—
         (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or
         (ii) it is otherwise in accordance with the overriding objective;
      (b) the application was necessitated by an act or omission of another party or the Tribunal; or
      (c) there are exceptional circumstances.
   (3) Where a Tribunal has ordered two or more postponements of a hearing in the same proceedings on the application of the same party and that party makes an application for a further postponement, the Tribunal may only order a postponement on that application where—
      (a) all other parties consent to the postponement and—
         (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or

(ii) it is otherwise in accordance with the overriding objective;

(b) the application was necessitated by an act or omission of another party or the Tribunal; or

(c) there are exceptional circumstances.

(4) For the purposes of this rule—

(a) references to postponement of a hearing include any adjournment which causes the hearing to be held or continued on a later date;

(b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.

9. Accordingly, to grant the postponement requested which has been made less than 7 days before the hearing the Tribunal would have to conclude there are "*exceptional circumstances*". It is trite law that absences for ill health or medical grounds would amount to an exceptional circumstance and the Tribunal interprets the "*medical reasons*" statement by the Claimant in his application to fall within this category.

10. However, ultimately the matter is down to the discretion of the Tribunal. This decision, though discretionary, must be correctly exercised and so regard should be had to the overriding objective and all the relevant circumstances. These relevant circumstances include the following non-exhaustive considerations: parties' rights to a fair trial, adverse consequences of granting and refusing postponements, the public interest in the efficient adjudication of cases. The Tribunal had regard to the relatively recent authority of *Phelan v Richardson Rogers Ltd* [2021] ICR 1164 which considered the case law on postponements on medical grounds (including the leading cases of *Andreou v Lord Chancellor's Department* [2002] IRLR 728 and *Teinaz v Wandsworth London Borough Council* [2002] ICR 1471, *O'Cathail v Transport for London* [2013] ICR 614).

11. The Tribunal with the case law in mind had regard to the following:
    11.1. the refusal of the postponement is likely, as in this case, to have a detrimental effect for the Claimant, and effects his right to a fair trial. Ordinarily that is a powerful consideration in granting a postponement but that cannot be always the answer otherwise every case would result in a postponement;
    11.2. the Respondent was also not in attendance and so arguably the inconvenience to it is less than in an ordinary case which may fall on the side of granting a postponement;
    11.3. the Claimant has not complied with any of the Presidential Guidance on postponing for medical reasons. No supporting medical evidence whatsoever has been provided and even the request, which is incredibly brief, gives no detail as to what "*medical reasons*" are. There is no statement as to what the condition is, when it developed, or even that no evidence can be obtained but will be sent soon for example. The Tribunal took the usual steps and made repeated telephone calls to the Claimant but to no avail. These are factors which start to weigh on the side of against granting the postponement. The Tribunal pauses to make clear that these factors in and of themselves do not necessarily 'outweigh' the earlier ones, it is only when this is considered with the other aspects below they do in this particular case;

11.4. the Claimant has failed to take any active part in the proceedings since presenting his ET1, which itself lacked a lot of the usual details. This is even more surprising given the hearing was due to consider striking out the claim for which ample notice was given. Ordinarily a litigant would have done something or sent something. It is not clear that the Claimant would have contributed anything to do the hearing. Fundamentally, there are two matters (a) no apparent working relationship and (b) time limits that would need to be canvassed. The first is something where one would imagine some form of documentary evidence from the Claimant. The Respondent has stated in its ET3 it has no records and found nothing in relation to him. So, the Claimant would be expected to counter this with some document, say a contract, a payslip, an email from a colleague asking him to do something. The canvassing of these elements would presumably lead to also covering aspects of the second issue, time limits, namely something showing a rough date of when these events occurred. These all weigh in the side of refusing the postponement. The Tribunal pauses to note that it considered whether to simply give a strike out warning on these matters but determined that was not the appropriate course. This would in effect be allowing the postponement by the backdoor and does not deal with the two points in the sub-paragraphs below;

11.5. the public interest in the efficient adjudication of cases. This overlaps a lot with the above point about nothing happening on this matter from the Claimant's end. The effect of a postponement is there will be another case in the system which in turn deprives others of more timely access to a hearing. Indeed, even the administrative load should not be overlooked, just having a case in the system requires lots of people to deal with it (be it maintenance of files, sending out correspondence, referring matters to judges and so on). This all weighs in favour of refusing the postponement;

11.6. the availability of reconsideration. The Tribunal notes the case law does not seem to really consider this. In the Tribunal's opinion in a hearing of this type that is something that a Tribunal can legitimately have regard to and favours refusing the postponement. By this type the Tribunal means it is not a case where it is a multi-day case where some evidence has commenced, or a Tribunal is making decisions on some evidence and for which a reconsideration if successful may be argued to not quite put the party back in the same position as before. Below the Tribunal deals in more detail with reconsideration.

12. Accordingly, having stepped back and considered all of the above points the Tribunal has concluded that the postponement application should be refused. In short, in this case the balance of whether to grant or refuse a postponement falls by virtue of the relevant factors on the side of refusal.

Dismissing case in absence of party

13. Having refused the postponement, the Tribunal moves on next to consider how to proceed with the matter.

14. Rule 47 ET Rules provides:

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.

15. The Tribunal has already considered the information available to it, after enquiries, about the reasons for the Claimant's absence. It has refused the postponement after all.

16. In accordance with rule 47 ET Rules, the Tribunal has looked at all the information it has. The Respondent was also not present but the result of all this is that the Tribunal has concluded the claim should be dismissed on the evidence available before it. This is because:
    16.1. the ET1 does not provide any dates of the relevant acts of alleged discrimination and so on. The Claimant has ticked "*continuing*" employment but the ET3 has stated that it has no records of ever employing the Claimant and it understood the allegations to relate to 2013. This would mean the claim would be considerably out of time in any event;
    16.2. the ET3 and notice of the Preliminary Hearing made clear what was to be dealt with and the apparent deficiencies in the case. The Claimant has not put anything in evidence or otherwise to reply to this. He has not even sought to refute that he has never been employed or worked for the Respondent or that any events were much more recent or explaining a delay in bringing his case. Indeed, the Claimant has on the face of it failed to take any active part in the proceedings at all, see the observations in paragraph 11.4 above which are repeated here;
    16.3. the Claimant bears the burden of demonstrating some form of working relationship given the denial by the Respondent, he has failed to do so. Indeed, given the denial of all the facts, the Claimant bears the burden in general;
    16.4. the merits of the claim on the current state of the evidence are weak, and indeed the Tribunal goes so far as stating it has no reasonable prospects of success on the current state of the evidence.

Observations about reconsideration

17. The Tribunal wishes to draw the Claimant's attention to its powers of reconsideration should he be dissatisfied with the refusal of his application for postponement and dismissal of his claim.

18. Rule 70 ET Rules provides

> *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*

19. Rule 71 ET Rules sets out how an application is made

> *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or*

within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

20. In the event of an application being made, under rule 72(1) ET Rules provide the Tribunal would first need to be satisfied that there are "*reasonable prospect of the original decision being varied or revoked*". It is therefore helpful to set out the type of material, without prejudging, that is likely to assist the Claimant should he wish to make an application for reconsideration:
    - 20.1. in terms of the application to postpone for "*medical reasons*":
        - 20.1.1. what is the medical reason he was relying upon at the time (ie the nature of the health condition concerned);
        - 20.1.2. when did this medical reason start;
        - 20.1.3. what if any effect did this medical reason have on his ability to prepare for the case and not merely attend on the day
        - 20.1.4. any supporting medical evidence in relation to this medical reason;
        - 20.1.5. medical evidence in relation to the prognosis of the condition and indication of when the state of affairs may cease (ie when the Claimant will be fit for a future hearing);
    - 20.2. in terms of the underlying substance of the claim:
        - 20.2.1. details of when each of the events complained of in the ET1 took place (ie dates);
        - 20.2.2. any documentary evidence to support a working relationship between the Claimant and the Respondent. This could include an employment contract, an agreement, payslips, proof of money being paid from the Respondent to the Claimant, emails/text messages/WhatsApp that relate to work being undertaken;
        - 20.2.3. any documentary evidence to support that the working relationship is still continuing as has been 'ticked' in the ET1, or if that tick was in error evidence of when the relationship ended (letter, email or so on setting out end date or alternatively when the Claimant commenced full time employment elsewhere after leaving the Respondent).

Employment Judge Caiden
7 August 2023

JUDGMENT AND REASONS
SENT TO PARTIES ON 11 August 2023

T Cadman
FOR EMPLOYMENT TRIBUNALS

Notes