



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondents

Miss Sandra Messi

(1) LVMH Fashion Group Services UK Limited
(2) Anne Millac
(3) Othman Bamarouf

Heard at: London Central Employment Tribunal

On: 12 July 2023

Before: Employment Judge Adkin

Members: Ms C Marsters
Ms J Carroll

Representations

For the Claimant: Did not attend

For the Respondent: Ms K Sheridan, of Counsel

REASONS

1. These are written Reasons for the Judgment including a Costs Order made at the Hearing on 12 July 2023 which the Claimant did not attend.

APPLICATION FOR DISMISSAL

Evidence

2. We received from the parties an agreed bundle of 672 pages which included recent correspondence up to yesterday. We also received witness statements from the Claimant and three witnesses for the Respondents including a witness statement from the Third Respondent himself. We were also provided at today's

hearing with a cast list, a Respondents chronology and a Respondents opening note all dated 10 July 2023.

Dismissal of Claim

3. The Claimant did not attend today's hearing of her claim of victimisation which was listed for three days. We waited an hour and started the hearing at 11am. One of the administrative staff called her telephone number but this rang out without the Claimant answering it. An email was sent to the Claimant again from someone in the Tribunal administration which the Claimant did not answer until after the decision to dismiss her claim had been taken. In any event the Claimant did not apologise for not attending or provide any indication that she would not be attending or make any application for a postponement. In fact, the Claimant had requested that the first day of the hearing would be heard remotely. That was refused by Employment Judge E Burns in an email communicated to the parties at 3:34 on Tuesday 11 July 2023. She said that the hearing would remain in person and that the Claimant was very welcome to bring someone with her to the hearing as a support. The Claimant responded six minutes later by email noted :) (that's colon bracket not an emoji) in response to that email Katie Woods of the Respondents solicitor requested that the Claimant bring her laptop to the hearing which she had failed to do on three previous occasions.

Pattern of nonattendance

4. The Respondent drew our attention to the many previous occasions on which the Claimant has failed to attend hearings both in this litigation and others. These examples were drawn to our attention:

- a. In claim 2206758/2018 in the London South Employment Tribunal a hearing on 27 January 2020 heard by Employment Judge Balagan which the Claimant did not attend.
- b. In a hearing in case 2203613/2019 a claim brought against Pret A Manger (Europe) Limited a remote hearing by CVP on 4 March 2021 in the London Central Employment Tribunal heard by Employment Judge Goodman sitting with Members which the Claimant only partly attended. It was noted that she declined to participate.
- c. In a hearing at the Watford Employment Tribunal case number 3314273/2021 a claim brought against Manpower UK Limited and another Respondent at a hearing on 23 November 2021 heard by Employment Judge McNeill QC the Claimant failed to attend the hearing.
- d. At a hearing at the London Central Employment Tribunal in case number 2204302/2021 and 2204154/2021 a claim brought against Cordent People Limited and others.
- e. A hearing on 18 January 2021 heard by Employment Judge Joffe at which the Claimant failed to attend.

- f. The Watford Employment Tribunal a hearing heard by Employment Judge Hyans on 13 July 2021 at which the Claimant did not attend.
- g. In a claim in the Bristol Employment Tribunal case number 1404778/2021 a hearing in front of Employment Judge Housego on 18 August 2021 where the Claimant did not attend, was not represented, and sent no submissions leading to the claim being struck out.
- h. In a case at the Watford Employment Tribunal a claim brought against five Respondents in case numbers, four consolidated claims the lead claim of which is 3314610/2021 a hearing on 19 August 2021 in front of Employment Judge DeSilver QC which the Claimant did not attend and the claims were all struck out on the basis that they were not actively pursued.
- i. In a claim at the London Central Employment Tribunal case number 2204154/2021 at a hearing heard by Employment Judge E Burns on 4 October 2022 which the Claimant did not attend and her application for interim relief was rejected with a Costs Order of £2,000 made against the Claimant. This one was drawn to our attention in particular because a Costs Order was made in the absence of the Claimant and this and a number of other matters was drawn to our attention by the Respondents on the basis that this showed that the Claimant fully understood the consequences including possible costs consequences of not attending a hearing.
- j. A claim brought against Cordent People Limited and two other Respondents, the Claimant did not attend an Open Preliminary Hearing listed on 18 January 2022 with the result that her remaining claims were struck out by Employment Judge Joffe.
- k. In a hearing at the Southampton Employment Tribunal heard by Employment Judge Self in the claim 1401237/2021 and 1401285/2021 the Claimant did not attend this hearing against Serco Limited and two other Respondents on 20 October 2022 with the result that the claim was dismissed pursuant to Rule 47.

5. It follows from this history that we accept the submission from the Respondents that initiating litigation and then failing to attend a hearing is "standard behaviour" from the Claimant.

Law on dismissal for nonattendance

6. Rule 47 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") provides as follows:

Non-attendance

47. 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. We considered the decision in the case of Robert v Skelmersdale College [2003] ICR 1127 and in particular paragraphs 14, 15 and 16. There is no obligation on the Tribunal to investigate in detail or consider the claim on its merits. We do need to consider the pleadings and other information available to us which is relevant to the failure of a Claimant to attend a hearing.

8. We have considered the pleadings in this matter and the Respondents' opening note and an email sent in response to that by the Claimant to the Tribunal and to the Respondents on 11 July 2023 sent at 10:32am that is a response to a strike out under Rule 37 and makes the application to convert the first day of this hearing to a remote hearing. As is noted above that application was refused by Employment Judge E Burns.

Respondents' submissions in support of dismissal

9. In addition to the history of failing to attend hearings which the Respondent drew to our attention the additional submissions were made that the Claimant bore the burden of proving facts to found her claim of victimisation. The points were made that this is a fact sensitive claim. The Respondents' case is that no allegation that the Equality Act had been breached had been made a protected act for the purposes of a claim of victimisation under section 27 of the Equality Act 2010.

10. Furthermore the Respondents' case is that the Claimant purported protected act for the victimisation claim was made in bad faith and it followed that this was a point which the Tribunal would need to hear live evidence on and in particular the Respondents should be given the opportunity to cross examine the Claimant especially against a background of her repeatedly bringing claims which are not pursued.

11. The Respondents submitted that it would be a waste of the Tribunal's time and resources and also by implication the Respondents own resources to have a hearing of the claim at which the Claimant was absent. We were therefore invited to dismiss the claim.

Tribunal's decision on dismissal

12. The Tribunal did consider carefully whether we ought to hear the substantive claim in the Claimant's absence or adjourn.

13. As to adjournment we had no confidence that the Claimant would be likely to attend a hearing listed on another date. It did not seem fair to us to put the Respondent to the additional expense of attending a hearing on another date when the Claimants attendance was significantly in doubt, furthermore we noted that one of the Respondents' witnesses Miss Sanchez had travelled from Spain to attend this hearing and another had left his employment for the day.

14. Ultimately we accepted the Respondents' submissions that it was not in the interest of justice to hear the matter substantively in the Claimant's absence. We

noted the points made about for example bad faith which really could only be tested in live evidence.

15. It is absolutely clear to us that the Claimant is aware that this hearing is taking place today and has chosen not to attend.

16. In the circumstances we consider that it is appropriate to dismiss the claim under **Rule 47**.

COSTS

Respondents' costs application

17. The Respondent applied for a limited amount of its costs. The total costs bill we were told was in excess of £50,000. The Respondents are however only seeking to recover Counsel's fees of £4,821.25 plus VAT of £964.25 making a total of £5,785.50.

18. The Respondents' submissions are in summary that the Claimant's failure to attend this hearing, following on from a pattern of failing to attend other hearings is itself unreasonable. As noted above one witness from the Respondent had travelled from Spain to attend this hearing whereas another had left his employment for the day. It is particularly unreasonable not to attend the hearing when the Claimant was in correspondence about it yesterday afternoon and had been requested, reasonably, to provide the Respondents laptop back to them.

19. The Respondent relies on a number of occasions on which the Claimant has been warned about costs either in this litigation or in others, in particular they highlighted pages 372, 609, 104, 97, 305 and 111 of the agreed bundle. It was also highlighted that Employment Judge Snelson had at a previous hearing warned the Claimant about the consequences of failing to withdraw a claim against the Second Respondent the page references for which are 104 and 307.

20. Next it is submitted that the Claimant has been repeatedly abusive in correspondence with the Respondents' solicitor and has also made baseless accusations against them in correspondence and also involving the Solicitors Regulatory Authority and the Metropolitan Police. For example in correspondence on 28 July 2022 at page number 213 in which the Metropolitan Police are copied.

21. Another example at page 298 is an email sent on 10 October 2022 in which the Claimant alleged that the Respondents and their representatives made false statements by omitting crucial evidence from a recording, when this was a baseless allegation, four minutes later at 16:04 on 10 October 2022 the Claimant copied in the Police to correspondence with the heading "in the event that you continue to slander my character despite evidence I have simply because I want justice I will provide evidence as per advice from my MP to have this matter published to be vindicated". That was also copied to one of the witnesses due to give evidence in today's hearing. There are numerous other examples drawn to our attention for example at pages 309, 316, 321.

22. The Respondent submits that the Claimant has been difficult to exchange witness statements with and references pages 326 and 348-349 which it says is evidence of a Claimant failing to cooperate in relation to preparation of the trial bundle. On 14 April 2023 at page 336 the Claimant makes allegations that the Respondents' solicitor was making false statements so that justice was not administered and that he was working hard to conceal evidence. The Respondents submits that this was baseless. At page 331 an email exchange on 6 April 2023 shows the Claimant threatening to call the Police and accusing the Respondents solicitor of appalling and shameful behaviour and dishonesty, vexatious and appalling behaviour threatening to "block" the Respondents solicitor.

23. On 8 June 2023 the Claimant copied in the Metropolitan Police accusing the Respondent solicitor of intimidation tactics by suggesting that recordings made by the Claimant be deleted as a condition of a settlement. She suggested that this was a breach or violation of the SRA Regulations. On 19 June 2023 the Claimant wrote to the Respondents solicitor as follows:

"Dear Paul

I advise you to refrain from making IN APPROPRIATE comments in regards to myself and I advise you to comply with the SLA Guidelines (sic) in which you continue to breach.

You are a disgrace and a disgusting, vile human being who uses his power to abuse litigants in person instead of concentrating on your job.

I am putting you on notice to cease this behaviour and should you continue you will be BLOCKED.

I trust you understand English

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[emphasis added]

24. The Respondent highlights the contents of pages 380 and 381. On 381 an email sent on the 21 June 2023 the Claimant indicated that she had "blocked" Paul Reeves the Respondents solicitor and wrote "will no longer deal with this embarrassing individual". In fact it seems that she had blocked Mr Reeves and had to be requested to unblock him.

25. At page 392 the Claimant alleged that the Respondents were in breach of Case Management Orders, that is an email sent on 26 June 2023 which the Respondents dispute.

26. On 28 June 2023 the Claimant wrote directly to the Solicitors Regulatory Authority, this is at page 439. She wrote

"they have continuously breached the SRA principles by being dishonest, stopping myself a litigant in person from obtaining justice, perverting the court of justice by deliberately admitting evidence and lying to the Tribunal by defaming my character to

paint me as a bad person despite disclosing to me their client appalling conduct (all attachment which was sent and disclosed by the lawyers).

27. She goes on to allege that there was appalling, shameful and unacceptable conduct such as asking her to delete evidence as part of a settlement and alleged INNACURATE (sic) transcripts.

Procedure for dealing with costs

28. Rule 77 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") provides as follows:

Procedure

77. A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.

29. Rule 77 provides that no Costs Order shall be made unless the paying party has had a reasonable opportunity to make representations in writing or at a hearing as the Tribunal may order.

30. The Tribunals conclusions are that the Claimant must have known that a costs application was likely to be made at this hearing, she has had the experience of Costs Orders being made against her in previous litigation.

31. The Tribunal has considered whether we ought to list a further hearing to deal with costs but we are not satisfied that it is likely that the Claimant would attend this and we find that it would be unfair to the Respondent to put them to the costs of a further hearing which the Claimant would be unlikely to attend. We did consider carefully whether we ought to allow the Claimant a mechanism to provide submissions and evidence on financial means. We note that there is some evidence of her means in the bundle to which we have referred. Ultimately, we consider that the Claimant had the opportunity to attend this hearing and that was her opportunity to make submissions as to costs and as to her financial means. However, we are prepared to entertain an application for reconsideration but only if the Claimant provides the details of her financial circumstances as specified at paragraph 3 of the note to the judgment signed by the Employment Judge on 12 July 2023.

Substantive application for costs

32. We do not consider it is appropriate to take account of the Deposit Order having been made in this case since we have not heard the matter on its merits

and for the purposes of the Respondents' application to dismiss brought under Rule 47 we did not enter into the merits of the substantive claim at all. Therefore we have disregarded the question of the impact of the deposit order.

33. We have however accepted the Respondents' submission that there is significant evidence of unreasonable conduct, first the Claimant failing to turn up against the background of a pattern of repeatedly failing to turn up in other litigation. It is quite clear to the Tribunal from correspondence yesterday the 11 July 2023 that the Claimant knew that this hearing was going ahead. We find that she knew that this hearing was going ahead and unreasonably failed to attend it.

34. There has been a lack of communication from the Claimant to the Tribunal either to apologise for failing to attend to this hearing or apply for a postponement.

35. After the Tribunal took its decision to dismiss the claim but before giving judgment on the question of costs we received from the Claimant an email sent at 12:45pm directed to Respondents and Counsel, Miss Sheridan who had forwarded her fee note at our request, she said this:

"Hi Katie,

This is not for me to pay and furthermore a new claim has already been made to the court of appeal in regards to this.

Refrain from emailing me in the future.

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36. A further email was sent by the Claimant which she did copy to Counsel in which she wrote this at 12:53 on 12 July 2023

Thanks for doing this @Katie.

Waiting to get judgment to take appropriate steps in the miscarriage of justice I continue to be facing by London central despite evidence and refusal to applications made by the same judges that are biased and in favour of the Respondents and their representatives.

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37. It seems to this Tribunal that this email cannot relate to our present decision since that had not been communicated to the Claimant in any format. We consider that this must relate to the decision not to grant the Claimant's application for the first day of this hearing to be remote and by video. In the circumstances we have not treated this as an application to recuse ourselves. There does not seem to be any proper basis for us to do so in any event.

38. We also note the number of occasions that the Claimant has failed to return the Respondents laptop at its request and that this request was made in relation to the present hearing today which the Claimant failed to attend.

39. We note the aggressive manner of the Claimant in correspondence.
40. We note the lack of cooperation with the litigation it seems to us to be a breach of rule 2 of the Employment Tribunal Rules.
41. We have noted that the Claimant blocked the Respondents solicitor on emails only unblocking him when requested to do so and apparently re-blocking him yesterday 11 July.
42. We note the bringing in of the Metropolitan Police to email correspondence and the Solicitors Regulatory Authority.
43. Plainly, there is a time to bring in authorities such as the Police Force or a professional's regulatory body. It seems to us in the circumstances of this case that there is nothing to merit the involvement of either of those bodies and that this is a tactic being employed by the Claimant unreasonably in our view to threaten and unsettle the Respondents lawyers who are simply trying to do their job of preparing this matter for hearing.
44. We note that the Claimant copied in one of the witnesses to this hearing in threatening terms.
45. In summary we accept the submission put forward by the Respondents that the Claimant has conducted this litigation in an unreasonable manner. We have taken account of the fact that she is a litigant in person. We make some allowance for the fact that she might not fully understand the procedures being followed, although we do note that she has some experience of Employment Tribunal litigation. We do take account of the fact that sometimes litigants in person feel frustrated by the process and furthermore that they may use language which is less polished and professional than professional representatives. We take account of that, but we still find that the Claimant has conducted herself in an unreasonable way. She has undoubtedly increased the costs for the Respondents by lack of cooperation.
46. Ultimately, we conclude that her failure to attend today's hearing, in common with many other Tribunal Hearings in which she was expected to attend is of itself unreasonable conduct since it places the Tribunal and the Respondents in litigation in difficulty in trying to resolve it.
47. In summary therefore we find that the threshold for making a Costs Order is made.
48. We have gone on to consider whether we should make a Costs Order. We consider that we should and it is appropriate to make a Costs Order.

Quantum of Costs Order

49. We note that the total bill for legal expenses facing the Respondent is in excess of £50,000. In the circumstances the Respondents have behaved in quite a restrained way by only seeking to recover Counsel's fees.

50. We have no hesitation in finding that the Claimant should pay the full amount of Counsels fees. This only represents less than 10% of the overall costs facing the Respondents.

51. In our judgment the unreasonable conduct of the Claimant has cost the Respondents at least that sum.

Financial means of the Claimant

52. We have taken account of the fact that the Claimant notified the Tribunal in an email sent on 6 October 2022 at 19:27 that she was earning £13.75 per hour working 40 hours per week.

53. That is the most up-to-date information we have about the Claimant's financial situation. Based on that information we have decided to make no reduction in the amount of costs payable.

Employment Judge Adkin

Date: 9 August 2023

WRITTEN REASONS SENT TO THE PARTIES ON

09/08/2023

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.