



EMPLOYMENT TRIBUNALS

Claimant

Mr P J Calvert

v

Respondent

North East Ambulance Service NHS
Foundation Trust

Heard at: Newcastle

On: 21 August 2023

Before: Employment Judge Loy

Appearances:

For the Claimant: No appearance or representation

For the Respondent: Miss C Millns of counsel

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – rule 47

The claimant's claims in both sets of proceedings are dismissed under rule 47.

REASONS

1. The claimant was employed by the respondent as a Coroner and Claims Officer from 25 June 2018 until his dismissal with effect from 19 January 2023.
2. The claimant brought two sets of proceedings. The first claim (case number 2501609/2021) alleged that the claimant had been subjected to detriments on the grounds that the claimant had made protected disclosures contrary to section 47B Employment Rights Act 1996 ("ERA"). The second claim (case number 2502444/2022) alleged that the claimant had been automatically unfairly dismissed contrary to section 103A ERA or, alternatively, ordinarily unfairly dismissed contrary to sections 94 and 98 ERA.
3. The final hearing in the first claim was initially due to be heard in June 2022 but was postponed on the application of the claimant shortly before the hearing commenced. The second claim, once it had been presented, was to be incorporated within the re-listed final hearing of the first claim in March 2023. Appropriate case management orders were made in February 2023 to

ensure that the second claim was fully prepared in advance of the re-listed final hearing. The second final hearing had to be postponed due to the absence of available judicial resource. The first and second claims were then relisted for a five day final hearing in person starting today, 21 August 2021, and ending on Friday, 25 August 2023.

4. The claimant did not attend today's hearing. The claimant had not contacted the tribunal in advance of the commencement of this five day final hearing of his claims to indicate to the tribunal that he would not be attending or be represented. Today, enquiries were made of the claimant by the administration by both email and telephone. On the second occasion upon which an attempt was made today to contact the claimant by telephone, a voicemail message was left for the claimant to return the administration's call. The claimant has not responded to any of the attempts by the administration to contact him.

5. Rule 47 of the Employment Tribunal Rules of Procedure 2013 says what happens if a party does not attend or fails to be represented at 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 enquiries that may be practicable, about the reason for the party's absence."

6. The procedural history of this case is unfortunate. The claimant has repeatedly failed to engage with the Tribunal or the respondent. The claimant has twice failed to comply with orders of the employment tribunal simply asking him to confirm his intention to attend and participate in the final hearing commencing today.

7. The claimant's first claim was fully prepared at the point at which it was postponed last year on the claimant's own application. The claimant made an application in January 2023 for interim relief in relation to his second claim under section 103A ERA. The hearing for interim relief was heard in person on 18 January 2023. The claimant did not attend nor was he represented at his interim relief hearing. The claimant's interim relief application was refused in his absence.

8. The claimant subsequently failed to comply with the tribunal's case management orders in relation to his second claim as a result of which the claimant was debarred by Employment Judge Sweeney from advancing any written or oral evidence in support of his second claim.

9. At a preliminary hearing on 2 May 2023, at which both of the claimant's claims were re-listed for final hearing starting today, the claimant was again ordered (on this occasion by Employment Judge McCluskey) to indicate whether or not he intended to be present at his final hearing and/or to participate in it. The claimant was also asked whether, if he was unable to attend, if he had any written submissions that he wanted the tribunal to take into account or whether he wished to apply for a further postponement. Reference was made

to the Presidential Guidance setting out what would be required if the claimant wished to make a further application to postpone on the grounds of ill-health. The claimant failed to respond to any of those orders.

10. A further preliminary hearing took place on 8 August 2023 before me at which the claimant's failure to respond to Employment Judge McCluskey's orders was noted. The tribunal's powers under rule 47 were set out in the case summary that was sent to the parties after that preliminary hearing. The claimant again failed to respond to the tribunal.
11. The respondent, a publicly funded organisation, has been represented either by counsel, their solicitors or both at all of the case management and other hearings that have gone ahead in either or both of the claimant's claims.
12. When it became clear that the claimant would not be either attending or be represented at today's hearing, the respondent was asked to conform its position. The respondent was very keen for the tribunal to proceed to hear the claimant's case in his absence under rule 47 rather than simply dismiss it. The respondent had fully prepared their defence to both claims and had a strong preference for the tribunal to hear the respondent's defence to both claims and to obtain a tribunal finding in public that it had not detrimentally treated the claimant for anything that was in any way connected to any disclosure made by the claimant; and that it had not dismissed the claimant for any such reason or otherwise unfairly dismissed him.
13. The respondent made clear that it was not seeking to strike out any of the claimant's claims or to have the claimant's claim dismissed under rule 47 without his claim being fully ventilated in public and made subject to public judicial determination on its merit or, in so far as the respondent was concerned, its lack of merit.
14. The tribunal adjourned to consider how to proceed. The tribunal considered both of the claimants claims separately and together. That included consideration of the documents and statements provided by the parties in respect of both the first and second claim.
15. The tribunal noted the powerful submissions which had been made on behalf of the respondent for the claim to be heard in the claimant's absence. The tribunal also noted the matters of potential public importance that the claimant had raised as well as the respondent's desire for consideration of the claimant's employment claims to be given in public.
16. However, the tribunal was also mindful that it has at all times also to consider the overriding objective and to act proportionately taking into account amongst other things the best use of tribunal time and resource. The tribunal also had regard to the difficulties that would ensue in assessing the merits of the claimant's claim in the absence of the claimant (or any representative of the claimant) given that the claimant's claims on the papers were at times unclear and at other times contradictory.

17. In the circumstances, the tribunal decided to dismiss both of the claimant's claims under rule 47 due to his failure to attend or be represented at this final hearing.

Employment Judge Loy

21 August 2023