



EMPLOYMENT TRIBUNALS

Claimant: Ms Nasreen Jafry

Respondent: Primark Stores Ltd

Heard at: London Central (in person)

On: 12, 13 and 14 July 2023

Before: Employment Judge Woodhead (sitting alone)

Representation

For the Claimant: Not in attendance 12 and 13 July 2023. Self-representing 14 July 2023.

For the Respondent: Mr K Sonaike (Counsel)

JUDGMENT

It is the judgment of the Employment Tribunal that the Claimant's claims are dismissed pursuant to Rule 47 of the Employment Tribunals Rules of Procedure 2013 ("the Rules") due to non-attendance at the hearing.

REASONS

THE ISSUES

1. This was a claim of unfair dismissal arising from the termination of the Claimant's employment on 22 February 2022 for gross misconduct (unauthorised absence).
2. The issues to be determined were agreed with the parties at a case management hearing on 24 November 2022 by Employment Judge Khan.
3. Employment Judge Khan listed the case for a hearing of 7 days to be heard in person at the Central London Employment Tribunals on 12, 13, 14, 17, 18, 19 and 20 July 2023.
4. The Claimant has asked for written reasons for the dismissal of her claim which are set out in this judgment.

THE HEARING

12 July 2023

5. The Claimant and Respondent were both in their respective waiting rooms for the start of the hearing on 12 July 2023. There was some delay in the Clerks attending the Parties in their respective waiting rooms but the Claimant then refused to come into the hearing.
6. The Clerks asked the Claimant to come into the hearing a number of times but she refused saying that she had thought that Employment Judge Khan, who had held a previous preliminary hearing on the matter, would be hearing her case. She did not want a postponement of the hearing. She wanted Employment Judge Khan to hear the claim and also said she was concerned that employees and former employees of the Respondent were attending the hearing. I was satisfied that the Claimant did not have a valid reason for refusing to come into the hearing. The Claimant and her companion left the Tribunal building after being asked to come into the hearing to discuss their concerns a number of times.
7. I heard submissions from the Respondent but considered that it was in the interests of justice and the overriding objective that I seek to make contact with the Claimant and that we reconvene the next day. On my instructions the Tribunal sent the Claimant an email, explaining the position to her, requiring her to attend the hearing the following day and warning her that if she did not do so then her claim may be struck out.
8. At 15:15 I heard that the Claimant and her companion were back in the building but before the Clerks had been able to speak to them they had left again.

13 July 2023

9. By 10:00am the Claimant had not arrived at the Tribunal and I was not aware of and had not seen correspondence that the Claimant's companion had sent to the Tribunal on her behalf at 03:49 (not copied to the Respondent).
10. Not having read her correspondence and the Claimant not being in attendance the Clerks called the Claimant at 10:14. The Claimant confirmed that she had received the Tribunal's email of the previous afternoon and referred to her response of early in the morning which she said explained in detail the reason why she was not in Tribunal today. She said it was over to the Tribunal as far as she was concerned.
11. The Claimant's email of 03:49 was sent on to me and to the Respondent and I concluded that it did not set out good reason for the Claimant's failure to attend. Given that we had time in the listing I asked the Tribunal to send correspondence to the Claimant explaining the position, requiring her to attend and giving her a further warning that if she did not do so her claim may be struck out. The Tribunal called the Claimant to draw her attention to the correspondence but she indicated that she would not be attending.

12. At 14:00 the Claimant was not at the Tribunal and I heard submissions from the Respondent on the options of postponing the hearing, hearing the claim in the Claimant's absence and strike out/dismissal of the claim.
13. I adjourned to consider my decision and the submissions that I had heard. I also reminded myself of the Presidential Guidance on strike out under Rule 37.
14. I concluded that in light of the sequence of events and the reasons given by the Claimant for her non-attendance, it was not appropriate to postpone the hearing to a later date.
15. I considered whether it would be fair and in the interests of justice and the overriding objective to hear the case in her absence but did not consider that was fair in the circumstances.
16. Whilst the Respondent's arguments in respect of the prospects of success of the Claimant's claim were persuasive, particularly in the Claimant's absence, I decided not to strike out on that basis. I also decided not to strike the Claimant's case out on the basis that she is was not actively pursuing it.
17. However, I decided that the Claimant's claim should be dismissed under Rule 47 for her failure to attend the hearing and because she had not provided a good reason for not attending, having been given a number of opportunities to do so.
18. I also found that, if I had not dismissed her claim under Rule 47, it would have been appropriate to strike her claim out under Rule 37(b) – her conduct in not attending the hearing being unreasonable in the circumstances and warranting strike out.

Employment Judge Woodhead

28 July 2023

Sent to the parties on:

28/09/2023

For the Tribunals Office