



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103851/2023

Held in Glasgow on 3 October 2023

Employment Judge M Kearns (sitting alone)

Mr D McMahon

**Claimant
Not present and
Not represented**

Royal Mail Group Ltd

**Respondent
Represented by:
Ms F Meek -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim is dismissed under rule 47 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claimant failed to attend or be represented at the hearing.

REASONS

- 1 The claimant presented an application to the Employment Tribunal on 20 July 2023 in which he claimed unfair dismissal. The respondent resisted the claim.
- 2 A two-day Full Hearing was fixed to begin today, Tuesday 3 October 2023. Notice of Hearing was sent out to the parties on 31 August 2023. The claimant contacted the Tribunal by email at 09:25 yesterday morning (2 October 2023) requesting that today's hearing be postponed in the following terms: "*I was asked on part of my Union the CWU if possible could there be a suspension out on my hearing date as their legal team are still reviewing my case. My case number is 4104851/2023. I do apologise for the short notice.*" No further details

were given. The application had not been copied to the respondent. The email was referred to the Duty Employment Judge EJ O'Donnell. The application could not be determined because it did not bear to have been copied to the respondent (contrary to rule 92 of the Tribunal Rules). However, EJ O'Donnell instructed that the letter should state: *"The Judge would have, in any event, refused the application even if it had been copied to the respondent. The claim has been lodged for several months and there has been no explanation why the claimant's trade union or their lawyers are only looking at the evidence now. There has been more than ample opportunity for the claimant to have sought legal advice and assistance and for this to have been done at an earlier stage rather than very shortly before the final hearing."* Following a further email from the claimant at 14:25 in which he stated that he *had* - in fact - advised the respondent of the application, the Tribunal replied to the claimant as follows:

"The claimant's email of 2 October 2023 has been referred to Employment Judge O'Donnell who has directed us to reply as follows. The Judge draws attention to the terms of the Tribunal's earlier letter of today's date that he would not have granted the request for postponement even if it had been copied to the respondent's agent and the reasons for that still stand. The claimant has been aware of the date of the hearing for over a month and the proceedings were lodged by him some time before that with the events giving rise to the claim occurring at an earlier date. The claimant has had more than sufficient time to seek representation from his union (or any other representative). He has not provided an adequate explanation why he is making this application at the very last minute before the final hearing. For example, he has not explained when he sought assistance and this is highly relevant; if the claimant left it very late to seek assistance then there needs to be a proper explanation why he did so; if he sought assistance at an early stage of the proceedings then there requires to be a proper explanation for why it has taken so long for this to be decided and why the claimant did not make a postponement application at an earlier stage. Further, there is no

indication of how much longer it would take for any decision on representation to be made. The Judge considers that the overriding objective requires him to bear in mind that there is a prejudice to the respondent in delaying the resolution of the case; they will have the litigation hanging over them for a further indeterminate period of time; the delay has the potential to negatively impact on the recollection of witnesses. For all these reasons, the application for postponement is refused and the hearing will proceed tomorrow as listed.”

- 3 The claimant attended the Tribunal building earlier this morning accompanied by Mr McKechnie, an official from the Communication Workers Union. Mr McKechnie advised the Tribunal receptionist that he had no instructions to represent the claimant but had attended with him to give him some support. However, both the claimant and Mr McKechnie left the Tribunal building before the hearing was due to begin.
- 4 The respondent attended today’s hearing, represented by their solicitor, Ms Meek. Their first witness was also in attendance. They requested that the case be struck out on the grounds that it had not been actively pursued under rule 37(1)(d). Ms Meek referred to the prejudice to the respondent in continuing with the case. She stated that the witnesses had taken time out from work to attend and the respondent had incurred the expense of that. The claimant had chosen to leave rather than address the Tribunal and continue. Ms Meek submitted that any further delay would cause further prejudice and cost to the respondent.
- 5 I asked the clerk to telephone the claimant to inquire about the reasons for his absence. The claimant informed the clerk that his union had let him down and that they had told him they could not represent him. He did not indicate that he had any intention of returning to take part in the hearing or state that he intended to continue with the case.
- 6 In the circumstances, I have treated the respondent’s application for strike out as a request that the case be dismissed under rule 47 on the ground that the claimant has failed to attend or be represented at the hearing. I have first

considered all the information available to me, the representations on behalf of the respondent and the inquiries made by the tribunal clerk on contacting the claimant as set out above. It is open to the claimant to apply for reconsideration within 14 days if appropriate. In all the circumstances, I have concluded that it is in line with the over-riding objective to dismiss the claim under rule 47 on the ground that the claimant has failed to attend or be represented. The claim is dismissed.

Employment Judge: M Kearns
Date of Judgment: 03 October 2023
Entered in register: 05 October 2023
and copied to parties

I confirm that this is my Judgment in the case of Mr D McMahon v Royal Mail Group Ltd 4103851/2023 and that I have signed the Judgment by electronic signature.