



# EMPLOYMENT TRIBUNALS

**Claimant:** A Akhtar

**Respondent:** John Lewis plc

**Heard at:** Reading

**On:** 5 September 2023

**Before:** Employment Judge Anstis  
Mr P Hough  
Mr G Edwards

**Representation:**

Claimant: Written representations

Respondent: Mr D Hobbs (counsel)

An order having been sent to the parties on 5 September 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The tribunal has produced two orders dated 5 September 2023 in this case. Reasons have previously been given for the second order. The claimant requested written reasons for the first order by an email on 5 September 2023 timed at 20:44. However, this request was not referred to the employment judge until 13 October 2023. These are the written reasons.
2. The order in question reads:
  - “1. The claimant’s application to postpone the hearing is refused.
  2. The claimant’s application to attend the hearing remotely is refused.”
3. This hearing was listed to take place on 5-8 September 2023.
4. It is difficult to keep track of the number of occasions on which the claimant has applied for this hearing to be postponed, but we will start our discussion of this with her application of 7 August 2023. The basis of that application was said to be late disclosure by the respondent. An exchange of correspondence followed

and on 8 August 2023 the claimant explained that she had gone through a bereavement in July 2022, which she wished the tribunal to take account of.

5. This was the subject of consideration by EJ Quill, who on 9 August 2023 refused the application and required witness statements to be exchanged on or before 24 August 2023.
6. On 14 August 2023 the claimant wrote requesting a reconsideration of that decision, reiterating that she could not be expected to consider 450 pages of documents before the hearing. In her pre-hearing checklist submitted that same day, as well as referring to her postponement applications the claimant said:

*“Due to rising cases of covid ... claimant requests final hearing to be conducted by CVP please and to permit claimant to attend by CVP. Whilst claimant has requested postponement of final hearing, request for CVP hearing is requested if and when provided new date for final hearing.*

*It is also to note that according to South East user group meeting notes June 2022 published online, stated that Reading Hearing Tribunal Centre has regular problems with heating and ventilation. Taking this into account and the health and safety regulations, CVP hearing is requested to allow claimant to attend hearing by CVP to provide access to justice.”*

7. On 15 August 2023 she wrote requesting that an urgent telephone case management preliminary hearing should be listed *“for the matters detailed in this email and to postpone September 2023 hearing”*. The basis of this was difficulties with the new documents and the tribunal bundle.
8. On 16 August 2023 EJ Quill wrote to say:

*“The claimant’s emails of 14 and 15 August 2023 (and the contents of the prehearing checklist) do not provide reason to vary ... the order I made for exchange of witness statements, or my refusal of the postponement application ...*

*I do not grant the claimant’s application that she attend the hearing by video. She must attend Day 1 by physically attending the hearing centre. She is free to ask the tribunal panel dealing with the case to consider making different arrangements for the remaining days, but she should proceed on the assumption that she will need to physically attend each day.”*

9. On the morning of 16 August 2023 the claimant wrote (apparently after EJ Quill had made his latest decision, but before she would have been notified of it) saying:

*“The final hearing is required to be postponed in the interests of justice as both respondent and tribunal evidently are aware that it is practically not possible to review over 450 documents as an unrepresented party,*

*not possible to review over 2,300 pages and complete witness statements in less than 1 week. In accordance with overriding objectives, to seek flexibility in proceedings, the claimant requests tribunal to grant the application."*

10. In the afternoon of 16 August 2023 the claimant wrote again to ask for a postponement, it seems on the basis of the new documents.

11. The regional employment judge wrote on 17 August 2023 to say "*The hearing is not postponed and will proceed on 5th September 2023 at Reading ET.*" Within an hour of this the claimant wrote again asking for a postponement or to convert the hearing to a video hearing (in view of the Covid risk).

12. On 18 August 2023 EJ Quill wrote to say:

*"I note the contents of the claimant's further emails and that she has already had a response to some of them from REJ Foxwell.*

*Her emails of 17 August 2023 at 14:25 pm and 14:18 pm do not raise new arguments that have not already considered or represent a change in circumstances.*

*The hearing is not postponed, and witness statements must be exchanged by 24 August 2023. The time that the claimant has spent recently writing lengthy emails objecting to these decisions could, and should, have been spent on preparing for the final hearing. The risks of Covid infection are not such that I will make an order that one side (the claimant) attend the hearing by video. As previously mentioned, on the first day of the hearing, the claimant must physically attend, and she is free to make an application to the panel to ask them to allow her to attend by video for the remainder."*

13. Later on 18 August 2023 the claimant wrote objecting to his decision not to convert the hearing to a video hearing. Shortly after that she wrote criticising his decision not to postpone the hearing and to require witness statements by 24 August 2023.

14. On 18 August 2023 the claimant submitted an appeal against the 9 August 2023 decision to refuse her application for a postponement.

15. On 1 September 2023 EJ Quill wrote saying:

*"The claimant's emails of ... 18 August ... are repeating points that have already been considered and rejected. If the claimant does not attend the hearing, then the panel will make a decision about that non-attendance, which might be to dismiss under rule 47, to strike out under rule 37 or whatever other decision they think is appropriate."*

16. Later that day the claimant wrote again seeking a postponement. This was based on apparent communication difficulties with the respondent's

representatives, and what she said was an outstanding rule 50 application. She says that *"covid 19 concerns and the worry of catching the virus is a legitimate reason to hold a hybrid hearing/remote hearing on request of one party."* She says *"claimant already notified tribunal of bereavement ... claimant has gone through three bereavements in the family in July and August 2023, therefore unable to attend hearing in person and only remote hearing"* and *"due to the worry of catching covid, claimant can only participate in remote hearings and not in person"*.

17. It is the 1 September 2023 application that was outstanding at the start of the final hearing, and that fell to be considered by this tribunal.
18. We have said that it is difficult to keep track of the number of postponement applications that the claimant has made, but it seems to have amounted to between 5-10 applications in the month prior to the hearing, which had resulted in four formal refusals of her applications to postpone the hearing. Of these, at least two of her applications and two of the refusals had also addressed the question of conducting the hearing by CVP.
19. While the claimant has placed different emphasis on the reasons for a postponement at different times, this has been across a consistent range of reasons. The reasons for holding the hearing by video had consistently been Covid risks, although the 1 September 2023 application had added that this was necessary by reason of the claimant's bereavements.
20. The expectation in litigation is that applications will be made once, with full details and supporting evidence being given at the time. The decision will be made once and is final, subject only to any rights of appeal (which the claimant has exercised in respect of at least one decision to refuse a postponement).
21. Rule 29 provides an opportunity for a tribunal to vary a previous case management order *"where necessary in the interests of justice"*. The scope of this was considered by HHJ Tayler in Liverpool Heart and Chest Hospital NHS Foundation Trust v Poullis [2022] EAT 9, where he said *"exercise of the power [to vary an order] will generally require a material change of circumstances or some other unusual circumstances"*. He explained that *"The underlying principles are that judges should not, in effect, hear an appeal against their own decisions, or those of a judge at an equivalent level, and that there should be finality in litigation so that ... a party ... should not find that it has been altered absent a material change in circumstances."*
22. We do not think it could be said that there have been *"other unusual circumstances"* in this case. We can only revisit the previous orders if there has been a *"material change in circumstances"*, but we are at a loss to think what that *"material change in circumstances"* might be. The claimant's communication difficulties with the respondent seem only to have arisen at the end of August, but that would not justify a postponement. If that had prevented the claimant from providing the respondent with a witness statement then that would seem to be more a reason for the respondent to seek an adjournment

than the claimant. If there were an outstanding rule 50 application it is the kind of thing that could be dealt with at the start of the hearing. There is nothing new in the email of 1 September 2023 that would justify a postponement or revisiting the previous orders on the basis of a material change in circumstances.

- 23. So far as the question of a remote hearing was concerned, EJ Quill had contemplated an application for this being considered by this tribunal, but only on the basis that the claimant attended the first day of the hearing, which she had not. The new matter referred to in support of this is that the claimant had suffered multiple recent bereavements (not just one in July 2022 as previously referred to), but there was nothing in the application on why these bereavements would require a remote as opposed to in-person hearing.
- 24. We refuse the claimant's applications on the basis that there has been no material change in circumstances that would give us jurisdiction to revisit the earlier orders, including the order that the claimant's attendance was required in person on the first day of the hearing.
- 25. For the avoidance of doubt, although we consider we are bound as a matter of law not to vary the earlier orders, we record that we do not see anything wrong or incorrect in the earlier orders, nor do we consider that the outcome of the claimant's application would have been any different if we did have jurisdiction to revisit or vary the earlier orders.

Employment Judge Anstis  
Date: 16 October 2023

REASONS SENT TO THE PARTIES ON  
19 October 2023

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FOR THE TRIBUNAL OFFICE