



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hypher

Respondent: Together Stronger (South Wales) Ltd.

Representation

Claimant: In person

Respondent: Mr N Henry, Consultant

Decision

The Respondent's application to postpone the final merits hearing, listed on 11 and 12 September 2023, is refused.

Reasons.

The Tribunal's decision to refuse the application was communicated orally to the parties with reasons. Mr Henry indicated that he would not be contesting the decision but asked for the reasons to be given in writing as he would need to explain it to his client. These are set out below.

1. The matter was listed for a final merits hearing by CVP on 11 and 12 September 2023.
2. The hearing began just after 10am when Mr. Henry and the Claimant were present. The parties indicated there were no preliminary issues arising and Mr. Henry conceded the claim of unlawful deduction of wages. The procedure of the hearing and issues were discussed and the Panel retired for 1 hour at 10.16am for reading.
3. When the hearing resumed at 11.24 am, Mr Henry applied for the hearing to be postponed as the Respondent's witness, Mr Pasha, was not in attendance. Mr. Henry had been told the witness had been unwell but had no details and confirmed he had had no contact with Mr Pasha about this matter before 10.22am on the day of the hearing.
4. The Claimant opposed the application to postpone.
5. The Tribunal heard representations from both parties and had regard to the principles summarized below, before making its decision.

6. The relevant rule for postponements in this case is rule 30A(2) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“ET Rules”).

Rule 30A ET Rules states:

30A.— Postponements

(1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.

(2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—

(a) all other parties consent to the postponement and—

(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or

(ii) it is otherwise in accordance with the overriding objective;

(b) the application was necessitated by an act or omission of another party or the Tribunal; or

(c) there are exceptional circumstances.

...

(4) For the purposes of this rule—

(a) references to postponement of a hearing include any adjournment which causes the hearing to be held or continued on a later date;

(b) “exceptional circumstances” may include ill health relating to an existing long term health condition or disability.

7. As the postponement requested in this case was made on the first day of the hearing, it was made less than 7 days before the hearing. The application was not consented to by the Claimant and it was not necessitated by an act or omission of another party or the Tribunal. Therefore, in order to grant the application, the Tribunal would have to conclude there were “exceptional circumstances”.

8. Absences for ill health can amount to an exceptional circumstances. It is a matter for the discretion of the Tribunal as to whether exceptional circumstances have been shown which should allow the application to postpone. This discretion must be correctly exercised and so regard should be had to the overriding objective and all the relevant circumstances.

9. The relevant circumstances include the following non-exhaustive considerations:

- both parties’ rights to a fair trial,
- the adverse consequences of granting and refusing the postponement and
- the public interest in the efficient adjudication of cases.

10. The Tribunal recognized that the refusal of the postponement was likely to have a detrimental effect for the Respondent as its witness would not be present to give evidence. It recognized this was an important consideration in determining the effect on the Respondent’s right to a fair trial. However this had to be balanced with the other factors relevant to the determination of the outcome.

11. The Claimant was in attendance and ready to proceed and would be inconvenienced by the granting of a postponement. Whilst it is recognized that

inconvenience will not outweigh the right to a fair trial, in this case, the Respondent's witness had not complied with any of the Presidential Guidance on postponing for medical reasons. The Respondent was represented but no supporting medical evidence was provided and the Respondent's representative was not able to give any details of what the illness was, when it arose, whether it was ongoing or whether the witness had sought medical advice and/or would be able to produce evidence. There was also no information as to whether the witness might be able to attend remotely, either in the afternoon of Day 1 or on Day 2 of the hearing. These factors weighed on the side of refusing the application for postponement.

12. The witness statement produced by Mr Pasha was undated and unsigned. It consisted of 4 paragraphs which did not fully address the substance of the Claimant's claims. There was no indication from the Respondent's representative that the witness, Mr Pasha, would seek to add to the contents of his witness statement if he was present.

13. The Tribunal also had regard to the public interest in the efficient adjudication of cases. The matter had been listed for a two day final merit hearing before a panel. The effect of a postponement would be that there would be another case in the system which in turn deprives others of more timely access to a hearing.

14. Taking all these factors into consideration, weighing the factors for and against granting the application, and mindful of the overriding objective, the Tribunal concluded that the postponement application should be refused.

Employment Judge S. Evans

Date 9 October 2023

REASONS SENT TO THE PARTIES ON 16 October 2023

FOR THE TRIBUNAL OFFICE Mr N Roche