



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hazel
Respondent: Lift Gear Engineering Limited
Heard at: East London Hearing Centre
On: 09 August 2023 (In person)
Before: Employment Judge B Beyzade

Representation

Claimant: Not present or represented
Respondent: Not present or represented

JUDGMENT

The Judgment of the Tribunal is that:

- 1) The claims presented under claim numbers 3207292/2021 and 3206617/2021 shall be considered by the Tribunal separately (and the claims shall therefore not be considered together by the Tribunal as consolidated claims) on the ground that the Mr D Hazel was not present or represented at the Final Hearing. The Clerk to the Tribunal is directed to amend the Tribunal's records accordingly.
- 2) The claimant's application for a postponement dated 09 August 2023 is not granted.
- 3) The claimant and the respondent being neither present nor represented at a point in excess of two hours after the time set for Final Hearing, the Clerk to the Tribunal having contacted the claimant's representative and the respondent by telephone and email on the morning of 09 August 2023, and on; the application made by the claimant's representative for a postponement and on the refusal of the claimant's application for postponement by the Tribunal, and having considered the content of the Tribunal file, the Tribunal dismisses the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

REASONS

1. The claimant lodged a claim for unfair dismissal, pursuant to section 103A of the Employment Rights Act 1996, which the respondent defended (having been granted an extension of time to present their ET3 Form).
2. On 27 April 2023 Employment Judge Jones issued directions to the parties and parties were accordingly directed to exchange documents by 15 May 2023, to prepare a Hearing Bundle by 23 June 2023; and the claimant was required to provide his witness statement to the respondent by 07 July 2023.
3. Paragraph 1 of the orders of Employment Judge Jones dated 27 April 2023 notified parties that the Final Hearing will take place at the East London Hearing Centre on 09 August 2023, that the hearing would start at 10.00am and that the parties must arrive by 09.30am.
4. A Notice of Hearing was issued to parties on 13 May 2023 advising the claimant and the respondent that the Final Hearing will take place at the East London Hearing Centre on 09 August 2023.
5. On 07 August 2023, the claimant's representative applied to postpone the Final Hearing which was listed on 09 August 2023. The basis for that application was that the respondent had not engaged with the claimant's representative, the claimant now resided in the United States of America ("USA") and he was not in a position to attend the in person hearing on 09 August 2023, that the claimant's representative requested a hearing to be listed by Cloud Video Platform ("CVP"), and further, they applied to strike out the respondent's response.
6. The application from the claimant's representative was referred to Acting Regional Employment Judge Burgher on 08 August 2023, who directed that the Final Hearing was to proceed as listed and that if the respondent did not attend, the Hearing will proceed in their absence.
7. The case called for Final Hearing at East London Hearing Centre on 09 August 2023 at 10.00am.
8. There was no appearance for or on behalf of the claimant or the respondent.
9. The case file records that Notice of the date and time set down for Hearing was sent to the claimant and the respondent on 13 May 2023 at the correspondence address provided by them to the Employment Tribunal for the purposes of receiving such communications. No return of the Notice of Hearing issued to the claimant, or the respondent has been received by the Tribunal.
10. On 08 August 2023 at 6.51pm the claimant's representative sent an email to the Tribunal attaching an electronic copy of the claimant's witness statement which was unsigned and undated together with submissions provided on behalf of the claimant. The cover email requested that in the event that Mr Hazel is unable to attend, the Tribunal should refer to the attached documents in terms of any decision

that it makes as well as their postponement application dated 07 August 2023. It was also requested that those documents be considered as part of Mr O'Driscoll's case.

11. On the sitting Judge's directions, the Clerk to the Tribunal checked and confirmed that no contact had been made by the claimant or the respondent with the Tribunal in connection with the Hearing since correspondence sent to parties by email on 08 August 2023 (other than the email correspondence referred to at paragraph 10 above).
12. On the sitting Judge's direction, the Clerk to the Tribunal attempted to communicate with the claimant and the respondent on the telephone number provided by the parties for that purpose. The respondent's representative was advised by telephone on the morning of 09 August 2023 that the respondent had not attended the hearing and must make contact with the Tribunal or attend by 10.30am, in the absence of which the Hearing will proceed in their absence.
13. The Clerk to the Tribunal contacted the claimant's representative by telephone to advise that the claimant and his representative did not attend the hearing, and that if he did not attend by 11.30am the hearing will proceed in his absence. The claimant's representative advised that the claimant was residing in the USA, and that they were seeking a postponement of the hearing. The Clerk to the Tribunal requested that the claimant's representative made an application in writing.
14. The Tribunal sat at 10.35am and then adjourned briefly at 11.15am and sat again at 12.07pm to afford the claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding his non-attendance. After a brief adjournment at 11.15am, the Tribunal reconvened at 12.07pm.
15. An application for a postponement was made by the claimant's representative at 11.46am on 09 August 2023. The email stated that the claimant's representative had detailed the reasons for the claimant's non-appearance in their email dated 07 August 2023. In addition, it was asserted that they had obtained new instructions that the claimant had moved to the USA due to his poor mental health following the loss of his job and personal circumstances. The email requested that the Final Hearing in relation to Mr Hazel's claim be postponed.
16. The claimant's postponement application dated 09 August 2023 was not granted. It was the responsibility of Mr Dean to inform his solicitors promptly of his move abroad to the USA. He had failed to inform his solicitors of his move abroad until 04 August 2023. His representative was sent a copy of the Notice of Hearing many months ago and the details of the Hearing were also confirmed at paragraph 1 of Employment Judge Jones's orders dated 27 April 2023. Acting Regional Employment Judge Burgher did not grant the claimant's postponement application dated 07 August 2023.
17. The only new matter to which the claimant's representative refers since the claimant's application dated 07 August 2023 is the claimant's health. I did not consider that there was any evidence to support the assertion made in the application dated 09 August 2023 that the claimant was suffering from poor mental health (including that he was unable to attend the hearing as a result of this, his

prognosis and when he is likely to be fit to attend a hearing in line with the *Presidential Guidance on seeking the postponement of a hearing* issued on 04 December 2013). It was not clear why this matter this was not raised in the claimant's earlier postponement application of 07 August 2023. No medical evidence had been supplied in support of the claimant's postponement application.

18. Moreover, it is not in accordance with the overriding objective to postpone the claimant's claim and for Mr O'Driscoll's claim to continue in the circumstances. The claimant's claim was presented on 19 November 2021, and it is not in the interests of justice for there to be a delay in terms of the Final Hearing. I considered Rule 30A of *Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* ("the ET Rules"). I also determined that granting a postponement would not be in accordance with the overriding objective set out in Rule 2 of the ET Rules.
19. At 12.12pm, the Tribunal dismissed the claimant's claim in terms of *Rule of Procedure 47 of the ET Rules*. The claimant had been afforded ample opportunity to attend the Final Hearing and he had failed to attend on 09 August 2023.
20. It will be open to the claimant to consider proceeding by way of Application for Reconsideration of the Judgment if he believes that there are grounds for him to do so.
21. The claimant did not attend today's hearing and Rule 47 of the ET Rules specifically deals with non-attendance at a hearing. It was not appropriate to hear the claimant's claim in the claimant's absence given the nature of the claim and issues before the Tribunal. I therefore dismissed the claimant's claim. I took into account the Tribunal's overriding objective (Rule 2 of the ET Rules).

Employment Judge Beyzade
Date: 11 August 2023