



EMPLOYMENT TRIBUNALS

Claimant: Mr Aaron Ali

Respondent: Tesco Stores Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: London South Employment Tribunal (by CVP)

On: 19 January 2024

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: No attendance

For the respondent: Mr A Lewis of counsel

JUDGMENT

The judgment of the Tribunal is that:

The claimant's claim is dismissed on his non-attendance under rule 47 of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. The claimant has not attended this hearing.
2. Mindful of rule 47 of the Employment Tribunal Rules of Procedure 2013, we have considered whether we should dismiss the claim or proceed in the absence of the claimant. We have also considered if we should adjourn the Hearing.
3. The claimant failed to attend the last hearing in this case before Employment Judge Tsamados on 2 Nov 2023 (Nov 23 Hearing). Without providing prior notification of his inability to attend. He did not answer calls made to his mobile phone or respond to an email sent to him by the Tribunal.

4. In the case summary section of the order of 2 Nov 2023, the Judge required the claimant, by 23 November 2023, to explain his absence to the Tribunal and the respondent, and also why he did not inform the Tribunal of his inability to attend and the reason for his lack of attendance with supporting evidence. The claimant failed to provide any of this information.
5. The Judge also ordered the claimant to provide various information about his alleged disability to the respondent by 21 December 2023. The claimant failed to do so.
6. The Judge stated that: 'The claimant may have perfectly valid reasons for not being here, but I need to lay down a marker that neither party can simply decide not to attend a hearing without any warning and that there can be consequences. Equally I would make it clear that Case Management Orders need to be followed and that there are consequences for failure without reasonable excuse to do so.' Order 11 stated that if any order was not complied with the Tribunal may, among other possible actions, strike out the claim.
7. On 15 Jan 2023, the respondent made a strike out application and copied in the claimant.
8. The respondent had informed us that it has not heard from the claimant at all since 28 Oct 2023.
9. The claimant did not attend this morning's hearing. The hearing was due to start at 10.00. The Tribunal, after that time, attempted to speak to the claimant three times on his mobile phone number provided. There was no answer from the number. At 10.06, the Tribunal also emailed the claimant as follows: 'Please join the hearing that supposed to begin at 10:00am. The Judge is willing to wait until 10:15. if you are unable to attend, please contact the Tribunal at your earliest convenience.' There was no reply and the claimant did not join the hearing.
10. We have considered whether the claimant requires greater flexibility and leniency from the Tribunal given his stated 'anxiety disorder'. On his claim form section 12, the claimant said he did not have a disability and left blank the box asking him to tell the Tribunal what assistance he needed as the claim progressed through the system, including for any hearings. The only information on the claim form identified by the Judge at the 2 Nov 2023 hearing which the claimant gave about the effect of his condition is that it created heightened states of fight or flight response. Although we can envisage that this may make it harder for the claimant to cope with a hearing, we do not see that it would prevent the claimant from contacting the Tribunal or respondent in advance about non attendance either at the November hearing or this hearing.
11. We consider that the claimant has acted unreasonably in failing to attend the hearing, without notifying his absence in advance or explaining in, particular given the warnings about non-attendance at the November hearing provided by Employment Judge Tsamados, and his failure to comply with the requirement of that Judge to explain his absence from the November hearing. Given the fact that the claimant has not complied with any of the orders in the Nov 23 Hearing

Judgment and has not contacted the Tribunal or the respondent since that hearing, including in knowledge of a strike out application from the respondent, all indications are that the claimant is not pursuing his claim.

12. We consider it to be in line with the overriding objective, in terms of dealing with issues in ways which are proportionate, avoiding delay and saving expense, to dismiss the claim.

19 January 2024

Employment Judge Kelly

Signed on: **19 January 2024**

Sent to the parties on:

5 February 2024

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For the Tribunal:

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Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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