



EMPLOYMENT TRIBUNALS

Claimant: Mr S Harris

Respondent: East Sussex Fire and Rescue Service

Heard at: Croydon (via CVP) **On:** 7 February 2024

Before: Employment Judge Leith

Representation

Claimant: No attendance or representation

Respondent: Ms Haynes (Solicitor)

JUDGMENT having been sent to the parties on 8 March 2024 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

Background

1. The case was listed before me for a final hearing (by video) on 7, 8 and 9 February 2024. The Claimant did not attend.

Relevant law

2. Rule 47 of the Employment Tribunal Rules of Procedure provides as follows:

“47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”

3. Rule 2 of the Employment Tribunal Rules of Procedure sets out the overriding objective of the Tribunal, which is to deal with cases fairly and justly. The rule provides that dealing with the case fairly and justly includes, so far as practicable:

“(a) ensuring that the parties are on an equal footing;

- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.”

Discussion

4. The Claimant claims unfair dismissal. The Respondent’s case is that the Claimant was fairly dismissed for gross misconduct.
5. A Preliminary Hearing took place before Employment Judge Aspinall on 9 November 2023. He clarified the issues in dispute and listed the case for final hearing for three days, on 7, 8 and 9 February 2024.
6. Disclosure had already taken place at that point. The parties were directed to exchange witness statements on 21 December 2023. The Claimant was also directed to produce a Schedule of Loss by the same date.
7. The Claimant was apparently not ready to exchange witness statements on 21 December 2023. At 16:04 on that date he emailed the Tribunal asking for an extension of time to 10am on 22 December 2023. He copied his email to the Respondent’s solicitor. He also said this:

“This will allow myself to hopefully rectify this issue and also send a hard copy first class In post to all relevant parties.”
8. The Respondent’s solicitor responded to the Claimant a few minutes later. She said this:

“Today is my last day in the office before I go on leave, however, I will be online tomorrow to exchange the Respondent’s five witness statements at 10am. If this does not take place at this time, my client has instructed me to make an application to the Tribunal to strike out your claim.”
9. The Claimant responded at 10:08 on 22 December 2023. He indicated that he was still experiencing “technical issues”, which were said to be related to the size of the statement.
10. On 28 December 2023, the Respondent applied for the claim to be struck out.
11. On 26 January 2024, the Respondent wrote to the Tribunal asking if the strike out application had been dealt with. On 29 January 2024, the Tribunal wrote to the parties asking if witness statements had been exchanged. The Respondent’s solicitor responded the same day explaining that statements had not been exchanged.
12. On 31 January 2024, at the direction of Acting Regional Employment Judge Khalil, the Tribunal sent the Claimant a letter headed “Strike Out Warning”.

The letter indicated that AREJ Khalil was considering striking out the Claim because the Claimant had not complied EJ Aspinall's Orders, and because the claim had not been actively pursued. The Claimant was given until 12pm on 5 February 2024 to respond.

13. The Claimant responded at 11:46am on 5 February 2024. He said this:

I wish to ask the tribunal for a hearing to object to the case being stroked out of court. I've had a number of personal issues on going over the last 8 weeks or so. Relationship breakdown. All my documents and statements were on shared laptop with my ex. I have been struggling with this situation. So I'm asking the courts if I could please have a hearing to put this forward. Also an extension on the hearing date.

14. That email was not copied to the Respondent's solicitor. The Tribunal responded as follows:

"Thank you for your email.
Please re-send, copying in all the parties concerned."

15. The Claimant emailed the Tribunal at 11:46 on 6 February 2024 saying this:

"I have made all other relevant parties aware
Will you be back in touch with myself regarding next stage.
As the hearing is scheduled for tomorrow?"

16. Then two minutes later he said this:

"Please could someone let me know soon as possible.
When the next date would be provided."

17. Neither email was copied to the Respondent.

18. Also on 6 February 2024, the Respondent wrote to the Tribunal again applying for a strike out or a deposit order.

19. The Tribunal emailed the parties at 15:50 on 6 February 2024 informing them that the case had been converted to take place via video. That email also contained joining details for the CVP hearing.

20. By 10:15 on the morning of the hearing, the Claimant had not connected to the video hearing. The Respondent had connected.

21. The Tribunal clerk attempted to contact the Claimant by telephone. The telephone number he had provided to the Tribunal did not work.

22. The Tribunal clerk then emailed the Claimant shortly after 10.30am. As at 10:55am, the Claimant had not responded to that email, and had not made

any attempt to join the hearing. I therefore joined the CVP hearing room to hear from the Respondent.

23. Ms Haynes informed me that she had not seen the Claimant's email of 5 February 2024, as he had not forwarded to her (despite implying to the Tribunal that he had done so).
24. I consider that the Claimant was well aware of the hearing. It had been listed since November 2023. He referred to it in his own email to the Tribunal the day before the hearing. I read the email of 5 February 2024 as a postponement application. Strikingly, however, it was not supported by any evidence, nor did it even give a reason why the Claimant sought postponement of the hearing.
25. The position as at 7 February 2024 was that neither party had seen the other's witness statements. The Respondent had not sent their witness statements to the Claimant, although they had sent them to the Tribunal (along with a paginated hearing bundle). I understand that that was to avoid the situation where the Claimant would gain a forensic advantage, in circumstances where he had not yet produced his own witness statement.
26. Even if the Claimant had thought that his (vague) postponement application would mean that the hearing would not go ahead, which his email of 11:48 6 February 2024 implied:
 - a. That was an entirely unwarranted assumption on his part;
 - b. In any event, that erroneous assumption would have been corrected by the Tribunal's email of 15:50 that day, which made it abundantly clear that the hearing would be going ahead, via CVP.
27. The Claimant did not make any contact with the Tribunal after its email of 15:50, either to indicate that he had difficulty attending today, or to indicate that he was having technical problems. The Tribunal staff made considerable efforts to contact him in order to encourage him to attend. But there was simply no explanation as to why he was not present. In my judgment, his non-attendance was of a piece with the way he had conducted himself in the proceedings generally, in that:
 - a. He failed to comply with EJ Aspinall's orders (and that failure was ongoing as at the date of the hearing);
 - b. He failed to engage with the Respondent or the Tribunal regarding that ongoing failure, and it took the threat of a strike-out in order to prompt a response from him; and
 - c. When he did (belatedly) engage with the Tribunal regarding his failure, he failed to copy his email to the Respondent. When instructed to resend the email to the Tribunal but copied to the Respondent, he did not do so. Instead, he simply made a vague assertion to the ET that he had "made all other relevant parties aware". That was, putting it in neutral terms, inaccurate.
28. There would undoubtedly have been significant challenges in proceeding with a final hearing, given that neither party had sent witness statements to the other party. But the hearing could at the very least have been used to case manage the claim such as to get it back on track. As the Claimant

failed to attend, nothing could be achieved. The Tribunal had set aside time for a three-day final hearing; the Respondent had prepared for that hearing.

29. Taking all of that into account, I was satisfied that it was in accordance with the overriding objective to dismiss the claim upon Claimant's non-attendance.

Employment Judge **Leith**
26 March 2024

REASONS SENT TO THE PARTIES ON
Date **12 April 2024**

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FOR THE TRIBUNAL OFFICE