



# EMPLOYMENT TRIBUNALS

## London South Employment Tribunal

22nd April 2024 (video)

**Claimant:** Michelle Gumayagay  
**Respondent:** Little Stepping Stones Day Nursery

### Open preliminary hearing

**Before:** Judge M Aspinall (sitting alone as an Employment Judge)

**Appearances:** No appearance for Claimant Ms  
M Wahabi for Respondent

### JUDGMENT

1. Upon the non-attendance of the Claimant and upon considering the material available, **the claim is entirely dismissed** (per Rule 47 The Employment Tribunals Rules of Procedure 2013 (as amended)).
2. The Claimant has failed to comply with orders of the Tribunal, failed to particularize her claims as requested and ordered, failed to attend the hearing today, failed to actively pursue her claim.
3. I find that her conduct of the claim has been repeatedly unreasonable.

#### Background

4. The Claimant, Ms Michelle Gumayagay, was employed by the Respondent, Little Steppingstones Day Nursery, as a nursery nurse from January 2010. The Respondent operates a private day nursery in London.
5. In January 2022, the Claimant was off work for several weeks due to experiencing symptoms of long Covid. Upon her return in February 2022, issues arose between her and her line manager regarding the Respondent's Covid protocols and risk assessments. The Claimant raised grievances with the Respondent over these issues.
6. Further issues emerged in March and April 2022 concerning the Claimant's working hours and rota arrangements. The Claimant states that unreasonable demands were made regarding her shifts and duties. She raised additional grievances over these matters with the Respondent's management.
7. In May and June 2022, the Claimant lodged grievances alleging discrimination and harassment by colleagues due to her Filipino nationality and Catholic religion. An internal investigation was conducted by the Respondent into these allegations during this period. The Claimant remained off work for medical reasons related to sciatica pain from April to July 2022.

8. The Claimant claims she was dismissed unfairly and discriminated against. She submitted a claim to the Tribunal in May 2023 alleging unfair dismissal and discrimination on grounds of disability, race, religion, and sex.

### **The Claims**

9. In her claim submitted to the Tribunal in May 2023, the Claimant alleged she was unfairly dismissed by the Respondent. She claimed her employment ended due to discrimination rather than voluntary resignation.
10. The Claimant brought disability discrimination claims under the Equality Act 2010. She alleged the Respondent failed to make reasonable adjustments regarding her conditions of long Covid, sciatica, chronic pain, and melanoma.
11. Further disability claims were brought citing harassment and victimisation by the Respondent due to sickness absences related to her conditions. The Claimant also claimed discrimination arising from disability regarding the termination of her employment.
12. Additionally, the Claimant presented claims of discrimination on the grounds of race and religion under the Equality Act. She alleged discriminatory treatment, harassment and victimisation based on her Filipino nationality and Catholic religion.
13. Sex discrimination claims were also lodged alleging unfavourable treatment regarding shift changes and rota arrangements amounting to harassment related to her sex. The Claimant claimed this ultimately resulted in her dismissal.
14. The Claimant argued she was subjected to multiple discriminatory detriments by the Respondent leading up to the termination of her employment in July 2022. She claimed the Respondent unfairly dismissed her rather than her resigning voluntarily.
15. The Claimant sought compensation for injury to feelings, lost earnings, and interest. She also requested that the Tribunal make recommendations to the Respondent regarding equal opportunities training and policies.
16. The Respondent denied the allegations of discrimination, harassment, and victimisation. It argued the Claimant resigned voluntarily due to ill health and was not dismissed. The Respondent contested her disability status.
17. The Respondent did not accept the Tribunal had jurisdiction to hear the unfair dismissal claim given the effective date of termination (either 1 January 2022 per the Claimant or 21 July 2022 per the Respondent) and when the claim was presented. It argued the claim was brought out of time if argued she was dismissed.

### **Purpose of this hearing**

18. This preliminary hearing was listed by Employment Judge Cawthray during a case management hearing held on 17 January 2024. Both parties attended the January hearing conducted via CVP video.
19. In the Case Management Order from that hearing, Judge Cawthray directed that a 2 day open preliminary hearing be listed for 22 and 23 April 2024, starting at 10:00am via video conference. This was recorded in paragraph 14 of the January 2024 Order.
20. Copies of the Order were sent by the Tribunal Office to both parties on 14 February 2024. The purpose was to determine outstanding jurisdictional issues regarding the unfair dismissal claim, establish if disability remained in dispute, and address case management matters.

21. The Claimant was present at the January hearing when Judge Cawthray set the April hearing date and explained its purpose. Following that hearing, the Respondent's representative also contacted the Claimant by email and post in January to confirm the April hearing details, at Judge Cawthray's request.
22. On 19 April 2024, the Tribunal emailed the Claimant and Respondent the video joining instructions for the preliminary hearing listed for 22 April 2024 at 10:00am. The Claimant was made aware of the hearing details on multiple occasions through the Tribunal's correspondence and the Respondent's direct contacts.

## **Discussion**

23. This preliminary hearing was called before me on 22 April 2024 in the London South Employment Tribunals, scheduled to commence at 10:00am via CVP video conference. There were initial technical delays, and the Claimant did not attend or make contact.
24. I asked my clerk, Mr Chukwuma, to telephone the Claimant regarding her absence. She claimed to be unaware of the hearing and that she was taking her mother to A&E. However, upon reviewing the case file I found the Claimant was notified of the hearing date in the January 2024 Order from Judge Cawthray, which she attended. The Respondent's representative, Ms Wahabi, also directly contacted the Claimant in January to confirm the details.
25. At 10:42am I commenced the hearing, addressing Ms Wahabi for the Respondent, with two public observers joining remotely. I determined to proceed under Rule 47 notwithstanding the Claimant's non-attendance. Ms Wahabi outlined the Respondent's position, including issues around the unfair dismissal jurisdiction and establishing disability status. She had attempted to assist the Claimant, though non-compliance with orders had stymied progress.
26. Having heard submissions, I dismissed the unfair dismissal claim as out of time by around 223 days. The Claimant provided no justification for extending the limitation period under s.111 of the Employment Rights Act 1996. She did not demonstrate it was not reasonably practicable to lodge the claim in time, nor that her delay in presenting it was reasonable. I could not even begin to contemplate an extension of time on the evidence before me.
27. Regarding the discrimination complaints, the Claimant's complete failure to comply with repeated orders for particulars meant it was impossible to determine their scope, details, or timeliness despite having over 5 months to provide this information. She failed to give any facts on the material elements of her claims, leaving the Tribunal and Respondent devoid of a reasonable understanding. This prevented any assessment of whether the claims fell within the limitation period or whether it would be just and equitable to extend the time limit. It severely prejudiced the Respondent's ability to respond. Her non-compliance rendered the claims irremediably defective and not viable to progress fairly. This constituted wilful abandonment of her duty to particularize. I therefore found dismissal to be the only appropriate course.
28. I express sincere sympathy considering the regrettable illness of the Claimant's mother. However, parties must properly engage and comply with orders to meet the overriding objective of dealing with cases justly and fairly. Here, even after almost a year, the Claimant's discrimination allegations remained opaque due to her sustained non-compliance, which squandered significant Tribunal and Respondent resources over fruitless hearings and applications.
29. Though I am compassionate for her situation, this could not excuse or justify months of inaction and neglect of her claims. As she persistently failed to particularize or advance

them, I held she was no longer actively pursuing the claims. I further held that she had behaved unreasonably in conducting the litigation as she has.

**Judge M Aspinall**  
**Monday, 22nd April 2024**

**Sent to Parties on**  
**23<sup>rd</sup> April 2023**

**For the Tribunal**  
**Office**

**P Wing**

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