



EMPLOYMENT TRIBUNALS

Claimant

Mr Roger Shand

Respondent

Solomon Commercials Limited

v

Heard at: Manchester Hearing Centre

On: 17 May 2024

Before: Employment Judge Tobin, sitting alone

Appearances:

For the claimant:

Not present or represented

For the respondent:

Mr S Morley (consultant)

JUDGMENT

The claimant's claim is dismissed, pursuant to Rule 47 of the Employment Tribunals Rules of Procedure 2013.

REASONS

The hearing

- 1 This has been the second case management hearing. The claimant indicated on his Claim Form that he could not take part in video or telephone hearings, so all hearings have been scheduled to be in person at the Tribunal's Hearing Centre. The purpose of the hearing was to review and clarify the claims made, to set out case preparation orders and to list the case for a full merits hearing with a final determination.

The case

- 2 The Claim Form was issued on 19 September 2023, after a period of ACAS Early Conciliation from 24 August 2023 to 8 September 2023. The claimant named 2 individuals in addition to the respondent. These potential additional respondents were rejected by the Tribunal because the claimant did not present ACAS Early Conciliation forms for the proposed additional respondents.

- 3 The Claim Form said that the claimant was a CNC Machine Operator from 23 August 2021 to 28 July 2023. The claimant claimed discrimination on the grounds of his race, religion, age and disability. The details of complaint referred to 3 instances on 23 August 2021, 18 November 2021 and in May 2023. Under Additional information, the claimant also said that he wanted the Employment Tribunal aware of poor management and staff and proceeded to refer to incident in December 2022 and 23 August 2021. One of both of those incidents may form part of his claim but these incidents, like the others, appear to identify different individuals, different types of discrimination and also different prohibited conduct and there appears large gaps in the chronology. In respect of his protected characteristics: so far as the claimant's race, he said that he is white British born, olive skin, his parents come from Cape Town, South Africa; for his religion, he said he is pagan; for the age discrimination claim, I see he was 63 yrs at the time of issuing proceedings; and, finally, his disability is identified as a hearing impairment. The claimant claims "a reasonable amount of damages" totalling £1.35m, plus another £200,000 for the loss of his job, notwithstanding he did not make a claim in respect of dismissal.
- 4 The Response denies all claims. The respondent contended all claims were out of time save, as to the May 2023 claim, and this claim (like the others) lacked sufficient particulars to do no more than deny liability.

The claimant's non-attendance

- 5 At the hearing today, the claimant did not attend. I delayed the start of the hearing whilst the Tribunal clerk ensured that the claimant had not signed-in so as to be possibly lost somewhere in the building. I checked that we had an up-to-date address for the claimant and that a notice of hearing had been sent to the claimant in accordance with the correct contact details previously given. No emails or other correspondence had been returned to the Tribunal and the Tribunal's information appeared to be correctly transcribed from the Claim Form details given. We were not given (by telephone, email or letter) any explanation for his non-attendance.
- 6 I telephoned the claimant on his mobile phone to ascertain his whereabouts and discuss his non-attendance. This was from the Tribunal hearing room in the presence of Mr Morley. There was no answer to my call and the call went straight through to voicemail.

Relevant chronology

- 7 A preliminary hearing was set for 19 March 2024, which was cancelled as the claimant was clear that he was not going to attend. I went through a relevant chronology.
 - 7.1 A notice of hearing for the 19 March 2024 preliminary hearing was set to the claim on 11 October 2023.

- 7.2 On 16 October 2023 Employment Judge Horn told the claimant he must come to the preliminary hearing.
- 7.3 On 3 January 2024 the claimant was told that he needed to attend the forthcoming hearing or that he could send in written representations. The hearing was converted to a final hearing in error, but this was quickly rectified and put back to a preliminary hearing.
- 7.4 On 24 January 2024 Judge Leach wrote to the claimant to ask him if he needed a hearing loop or other adjustments and confirmed that he should attend the preliminary hearing set for 19 March 2024.
- 7.5 On 29 January 2023 the claimant asked for early conciliation and indicated that he wanted to settle his claim. There is some correspondence around possible settlement but that is not relevant to this chronology.
- 7.6 On 9 February 2024 Judge MacDonald wanted to know why the claimant thought he need not attend the forthcoming hearing and he asked the claim to provide answers to very specific questions – to date the claim has not answered Judge MacDonald’s questions.
- 7.7 On 27 February 2024 Judge Slater told the claimant he needed to attend the preliminary hearing or explain fully why he could not.
- 7.8 On 29 February 2024 the claimant said that he was not going to attend the hearing as he was suffering from stress. He sent a fit note stating “stress and anxiety” dated 7 March 2024 for 28 days.
- 7.9 On 14 March 2024 Judge Butler refused to postpone the preliminary hearing. He explained in detail why a fit note was not accepted.
- 7.10 On 14 March 2024 the claimant sent a rather abrupt email to the Tribunal which explicitly indicated that he would not attend the preliminary hearing.
- 7.11 On 18 March 2024 Judge Ross recognized the impasse. She postponed the 19 March 2024 preliminary hearing and relisted the hearing. Similar to numerous times previously, the Judge (again) explained why we needed to get on with proceedings. Judge Ross advised the claimant what he must do if he wanted to make a future application to postpone any hearing on the grounds of ill-health.
- 7.12 The hearing was rearranged to today hearing because it was listed without referring to the respondent’s availability and the respondent’s representative could not accommodate that hearing because of a pre-existing commitment. So, on 2 April 2024 Judge Slater rescheduled that hearing and sent the parties a notice of hearing for today.

Proceeding in the claimant's absence

- 8 Mr Morley informed me that he had previously sent a copy of the hearing bundle for today's hearing to the claimant. He said that the claimant had contacted his office yesterday and informed his colleague that he (i.e. the claimant) had only just been made aware of today's hearing. Mr Morley reported that the claimant intimated to his colleague that he would not attend today and his email referred to another sicknote, but one was not attached to his email.
- 9 The claimant did not copy-in the Tribunal on this email correspondence. He has not contacted the Tribunal since yesterday (which is the latest date that the claimant knew of this hearing).
- 10 I do not believe that the claimant was unaware of this hearing until yesterday.
- The claimant did not attend the Tribunal for the original hearing on 19 March 2024, so he got Judge Ross' postponement notice.
 - He did not attend the Tribunal on the 7 May 2024¹ so he clearly received Judge Slater's letter which postponed that hearing and rescheduled it for today.
 - The claimant has never raised any issues with postal correspondence, which was his preferred method of communication.
- Therefore, I do not believe that the first he knew of this hearing was from receipt of the respondent's hearing bundle. But even if he was unaware until yesterday, he still had time to either turn up today or inform the Tribunal of the late notice. It is telling that he has ducked corresponding with the Tribunal.
- 11 If the claim is so ill that he cannot attend then Judges MacDonald, Slater, Butler and most recently Ross have told him what steps he needed to take to pursue a postponement application. He has chosen not to do this.
- 12 I conclude that the claimant voluntarily absented himself from today's hearing.
- 13 In view of the claimant's non-attendance, I first considered whether to proceed in his absence. No request for an adjournment had been made, either to the Tribunal or through the respondent. I could not think of good reason to adjourn. If I adjourned this hearing then, on the information available to me, I anticipated that we would be in exactly the same situation on any reconvened hearing. The parties were aware of the hearing today, the respondent's representative was here. The importance of attending the preliminary hearing had been explained by 6 Judges on at least 9 occasions.
- 14 If I did not proceed today, there could be no further progress in this case and Mr Morley indicated that he would want to pursue reimbursement of the respondent's wasted costs. The Response indicated that the claimant had made

¹ The original rescheduled date

a discrimination claim in 2018 and that this was struck out in 2019. Mr Morley said the claimant should, therefore, be aware of both the need to co-operate with the Tribunal and attend hearings.

- 15 Accordingly, I decided that it was appropriate and within the overriding objective of rule 2 of the Employment Tribunal's Rules to proceed in the absence of the claimant.

My decision to dismiss the claims

- 16 I first considered what progress I could make without the claim here. The allegations are far-ranging and ill-defined. On the basis of the details of complaint, the claims look weak. The respondent has asked for further particulars, which the claimant has ignored. The claimant has demonstrated a desire not to attend preliminary hearings so I have no confidence that he will comply with case management orders. So, we are left with vague and seemingly weak claims with, I determine, slight prospects of clarifying.

- 17 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 applied. That provides:

“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.”

- 18 The claimant has been discourteous in his treatment of the Tribunal. Unfortunately, such discourtesy is something Employment Judges are growing accustomed to in undertaking our role. The apparent discourtesy of his email of 14 March 2024 and of not turning up for this hearing and, seemingly, not bothering to inform the Tribunal of his likely non-attendance is not a factor I took into account.

- 19 A significant factor is that Employment Tribunals are under enormous pressure with the volume of claims, and, like other sectors of the public service, we need to deliver much more for less resources. The parties have a right to a fair hearing, but they do not have a right to ongoing indulgence. Cases are waiting for hearing for up to 2-years or longer. This hearing was scheduled for ½-day today, and that slot cannot be reallocated to another case to fill the gap. This cannot be an acceptable use of scant public resources without clear progression.

- 20 The claim is weak and vague, and the claimant has demonstrated his resistance to co-operate in clarifying what his complaints are about. I cannot make case management orders when I have no confidence that these will be adhered to. Time and resources have already been spent and we are no further in clarifying these claims. Ultimately, a fair hearing cannot be possible with this degree of defiance or oppositional behaviour. After various warnings and the involvement of 6 judges before me, we need to come to some form of resolution. The claimant

Case Number: 2409471/2023

had the opportunity to pursue this matter today and he did not take that opportunity. In the circumstances, it is appropriate to dismiss the claimant's claims.

Employment Judge Tobin
Dated: 17 May 2024

JUDGMENT SENT TO THE PARTIES ON
31 May 2024

FOR THE TRIBUNAL OFFICE

Notes

Public access to Employment Tribunal decisions

All judgments and Written Reasons for the Judgments (if given) are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>