



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss K Kessassi

v

Tesco Stores Limited

Heard at: Watford, (In person)

On: 30 May 2024

Before: Employment Judge Bansal, (sitting alone)

Representation:

Claimant: No attendance & not represented

Respondent: Miss G Corby Counsel

JUDGMENT

The Claimant's claim is dismissed pursuant to Rule 47 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013

REASONS

Background

- 1 The claimant was employed by the respondent at its Harlesden Stonebridge Express store as a Customer Assistant from 13 November 2018 to 15 May 2021.
- 2 Following a period of Early Conciliation from 21 November 2023 to 23 November 2023, the claimant presented a Claim Form on 23 November 2023 pursuing claims for disability discrimination, arrears of pay and other payments. The claimant ticked the boxes at Paragraph 8.1 but has not particularised each complaint.
- 3 By a Response Form filed on 12 February 2024, the respondent resists the claim, and in particular has raised the issue of lack of particularisation of the complaints

and also the jurisdictional point that the Tribunal does not have jurisdiction to hear the claim as it has not been presented within the statutory time limits.

4. By Notice of Hearing dated 18 March 2024, the Tribunal listed a Preliminary Hearing for 30 May 2024 at 10.00am to be heard in person. The listed hearing is to determine:
“If there were complaints presented outside of the time limits in sections 123(1)(a)8(b) of the Equality Act 2010 and if so, should it be dismissed on the basis that the tribunal has no jurisdiction to hear it”
5. The Tribunal also made Case Management Orders for this hearing, namely that;
(i) by 1 April 2024 the parties to send copies of documents on which they rely;
(ii) by 15 April 2024 the parties to provide statements for any witness.

The Preliminary Hearing

6. In preparation for this Preliminary Hearing today, the respondent representative prepared and served on the Tribunal and copied to the claimant a bundle of documents of 40 pages, and a skeleton argument.
7. This morning at 9.50am, the clerk to the Tribunal confirmed that Miss Corby, Counsel for the respondent was in attendance but that the claimant had not yet arrived. I directed the clerk to wait until 10.05am before making telephone contact with the claimant to ascertain her whereabouts. At about 10.07am, the clerk informed me that he made contact with the claimant on her mobile phone. She explained that she was not well to attend. She did not give any further information about her ill health or why it was not practicable for her to attend this hearing.
8. Miss Corby confirmed that the claimant had not complied with the Case Management Orders, and that a copy of the bundle was emailed to her on 22 May 2024. The claimant has made no contact with the respondent. Miss Corby invited me to dismiss the claimant’s claim on the basis of the claimant’s non-attendance and the prejudice caused to the respondent by having to defend a claim that lacks any particularisation and which is considerably out of time by over two years, for which the claimant has provided no explanation for the delay in presenting this claim out of time.

Non-Attendance

9. Rule 47 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the “Tribunal Rules”, provides as follows:
“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 parties' absence."

10. I am satisfied the Tribunal made such enquiries as were practicable about the reason for the claimant's non-attendance. The Tribunal made telephone contact with the claimant and was only told that she was unwell without giving any further information. I do not consider this to be a valid explanation in the absence of any medical evidence or a detailed explanation. It was incumbent upon the claimant to fully explain her reason for not attending this hearing, including providing details of her medical condition and why she had not informed the Tribunal or the respondent representative that she would not be attending this hearing. I was satisfied from the Tribunal file and from Miss Corby that the claimant was aware of this hearing, yet she made no attempt to make contact either with the Tribunal or the respondent representative to explain her non-attendance.
11. I did not consider it appropriate to hear the claim in the claimant's absence given the nature of the claim and the issues before the Tribunal, and that it requires the claimant to give evidence.
12. I also considered and gave full effect to the Tribunal's overriding objective (Rule 2 of the Tribunal Rules). In the circumstances, I concluded that dismissing this claim under Rule 47 is proportionate and in accordance with the Tribunal's overriding objective. The claim is dismissed.

Employment Judge Bansal
Date: 30 May 2024

Sent to the parties on: 9/07/2024

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.....J Moossavi.....
For Secretary of the Tribunals

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