



## EMPLOYMENT TRIBUNALS

**Claimant**  
Mr M Asret

**Respondent**  
Gravitas Care Ltd

## PRELIMINARY HEARING BY CVP

**Heard at:** Leeds by CVP **On: 10 September 2024**  
**Before:** Employment Judge Davies

### Appearances

**For the Claimant:** Did not attend  
**For the Respondent:** Ms Younis (Peninsula)

## JUDGMENT

1. Pursuant to Employment Tribunal Rule 47 the claim is dismissed.

## REASONS

2. This was the hearing to determine the Claimant's complaint of unfair dismissal against the Respondent. The Claimant did not attend. The Respondent was represented by Ms Younis from Peninsula. I decided that in accordance with the overriding objective the claim should be dismissed under Employment Tribunal Rule 47.
3. In reaching that decision I had regard to the history of these proceedings, which is as follows:
  - 3.1 The claim was presented on 15 November 2023. The Claimant complained of unfair dismissal. The Claimant had a legal representative at that time. In his claim form he said that he had prepared a written resignation letter and had handed it in at his disciplinary hearing. He said that it was not accepted there and then, and he was given a chance to consider whether he wanted to retract it. He asked for more time to consider his options and was not given more time. He did not ask to withdraw his resignation and it was accepted.
  - 3.2 The claim was listed for a hearing on 11 April 2024 and the Tribunal made case management orders. They required the Claimant to disclose his relevant evidence and to prepare a witness statement for himself.
  - 3.3 After the response was presented, Employment Judge Lancaster wrote to the parties pointing out that a resignation does not have to be accepted to take effect and that it cannot be unilaterally withdrawn. The employer must

agree, otherwise the resignation will take effect. The Judge indicated that the issue in the case was therefore likely to be whether the Respondent had committed a fundamental breach of contract prior to the Claimant's resignation, which would have enabled him to argue that he was constructively dismissed rather than resigning.

- 3.4 The Claimant's representatives came off the record on 6 March 2024. The Claimant's documents should already have been disclosed by that date, but they were not. Following a telephone conversation on 12 March 2024, the Respondent sent the Claimant a copy of the Tribunal's orders.
- 3.5 On 27 March 2024, the Respondent applied for the claim to be struck out because the Claimant had not complied with the Tribunal's orders and had not communicated with the Respondent.
- 3.6 Employment Judge Lancaster made an unless order requiring the Claimant to confirm by 10 April 2024 that he was still actively pursuing the case and would attend the hearing. The Claimant sent an email on 9 April 2024 indicating that he was seeking compensation of around £12,000. He did not copy the Respondent. He also sent a copy of a subject access request he had made. Employment Judge Lancaster deemed this to be compliance with the unless order. It appears that the Tribunal did not copy the Claimant's emails to the Respondent.
- 3.7 On 10 April 2024 the parties were warned that the hearing might be postponed because the Tribunal did not have a Judge. The Claimant responded by saying that it would be better if the hearing could be rearranged because he had a job interview. The case was postponed because the Tribunal did not have a Judge. However, I note that the Claimant had arranged a job interview for the hearing date. It was only the Tribunal's email warning him that the case might be postponed that led him to tell the Tribunal about that.
- 3.8 On 7 May 2024 the Tribunal wrote to the parties telling them that the hearing would now be on 10 July 2024.
- 3.9 On 3 July 2024 the Claimant emailed the Tribunal to say that he would not be able to attend the hearing because of health and family reasons. Employment Judge Shepherd urgently required him to provide evidence. He reminded him that he must copy his emails to the Respondent if he wrote to the Tribunal.
- 3.10 On 8 July the Claimant sent the Tribunal a fit note that referred to "stress related issues" and signed him off work from 13 June to 12 July 2024. He sent a letter from his psychotherapist explaining that he had symptoms of anxiety induced panic disorder, sleep irregularities and social isolation. The therapist expressed the view that the Claimant was unfit to attend a Tribunal hearing because it might be detrimental to his mental well-being.
- 3.11 The Claimant was instructed that he must copy in the Respondent if he wanted the evidence to be considered and he did so.
- 3.12 On 9 July 2024 Employment Judge Miller agreed to postpone the hearing. The Claimant was ordered to write to the Tribunal by 9 August 2024 to say when he would be well enough to attend the Tribunal. At the same time, the hearing was re-listed for today, 10 September 2024. The Claimant was informed of this on 9 July 2024.
- 3.13 On 11 August 2024 the Claimant wrote to the Tribunal to say that he was unable to attend "any upcoming hearing". He asked to be informed if "proof" was needed.

- 3.14 Employment Judge Ayre treated this as a postponement application. On 23 August 2024 she refused it. She said that the Claimant had not provided the information required by Employment Judge Miller. She said that if he wished to make a further postponement application, he would need to provide medical evidence confirming when he would be fit to attend a hearing.
  - 3.15 On 29 August 2024 the Claimant emailed again, simply saying “please find attached the requested information.” He provided a further fit note signing him off work until 6 October 2024 with “stress related problem” and a further letter from his psychotherapist indicating that he was currently psychologically unfit to attend a hearing as it might be detrimental to his wellbeing.
  - 3.16 On 6 September 2024 the Tribunal requested urgent comments from the Respondent.
  - 3.17 On 9 September 2024 the Claimant’s postponement request was refused by Employment Judge Brain. The Judge pointed out that the Claimant still had not provided information about when he might be fit to attend a hearing.
  - 3.18 The Claimant emailed back to say that he could not attend the hearing tomorrow because it was such short notice. He said that he had doctor’s appointments and childcare. I note that the Claimant had been aware of the hearing date since 9 July 2024.
  - 3.19 The Claimant telephoned the Tribunal shortly after 9.30 this morning. He said that he had been trying to connect to the hearing unsuccessfully. He was told that he should try to join the hearing at 10am, and that if he had difficulties steps would be taken to address it.
  - 3.20 The Claimant did not join the hearing at 10am. I asked the Tribunal’s clerk to call him. He said that he was currently sofa-surfing and did not have proper internet access. He said that he had tried connecting to the hearing unsuccessfully and that the helpline service had not been able to assist. In any event, he said that he was not well enough to participate in the hearing. He did not refer to childcare commitments or a doctor’s appointment.
4. At the hearing. Ms Younis for the Respondent told me that the Claimant has still not provided disclosure of any documentation and has not provided a witness statement. Indeed, he has not really communicated with the Respondent since presenting his claim, and has only copied the Respondent in on a small number of his emails to the Tribunal. She also suggested that the claim itself has poor prospects of success, given that on the Claimant’s own account he presented a written resignation and there was no agreement that he could withdraw it. The context was that he was attending a disciplinary hearing following allegations made by a vulnerable person.
  5. In assessing the appropriate course of action, it is necessary for me to consider the interests of justice to both parties, trying to ensure the parties are on an equal footing so far as practicable, proportionality, avoiding unnecessary delay and saving expense. I also noted that under Tribunal Rule 30A, exceptional circumstances are required to postpone a hearing within 7 days of the hearing date, or when the person has made two or more postponement applications.

Weighing all those factors, I considered that dismissing the claim was consistent with the overriding objective. In particular:

- 5.1 The Claimant had been aware of the hearing date since 9 July 2024. That was plenty of time to make childcare arrangements and rearrange doctors' appointments. It was also plenty of time to tell the Tribunal that he did not have the ability to take part in an online hearing and ask for the hearing to take place at the Tribunal. He did not inform the Tribunal of any such difficulties.
- 5.2 The Claimant had twice applied unsuccessfully for this hearing to be postponed.
- 5.3 The Claimant has been repeatedly required to indicate when he might be fit to attend a Tribunal hearing and has not done so.
- 5.4 The medical evidence provided does not provide a clear diagnosis. The fit notes do not explain whether and to what extent the Claimant is currently able to participate in a Tribunal hearing and they do not address the question when he will be fit to do so. The psychotherapist does not provide a firm diagnosis. They simply express the view that participating in the hearing *may* have a detrimental impact on the Claimant's wellbeing and they do not give any indication when he will be able to attend.
- 5.5 It is often the case that Tribunal proceedings are one of the key causes of a party's mental ill health and that it is difficult for that mental ill health to be resolved until the proceedings are resolved.
- 5.6 This claim was presented ten months ago. It is the Claimant's case and is for him to pursue. While I have sympathy for his personal circumstances and accept that he has poor mental health at the moment, I must also weigh the other relevant matters in the balance. This has also been hanging over the Respondent and its witnesses for some time now. I am told that one of those witnesses is self-employed and each hearing date requires him to arrange time to attend the hearing. The Claimant has not complied with the case management orders about preparing for the case and he has not complied with the orders about telling the Tribunal when he might be fit to attend a hearing. He has not communicated with the Respondent and regularly emails the Tribunal without copying in the Respondent, despite being repeatedly instructed not to do so. It does not appear to me that there is a realistic prospect of the Claimant properly engaging with his claim.
- 5.7 The reasons the Claimant has given for his difficulties attending the hearing today have varied – short notice, childcare, doctor's appointment, technology difficulties, ill health. While he told the clerk that he was struggling to connect to the CVP hearing, it is apparent that he did not intend to participate in any event. He could have dialled into the hearing by telephone but he told the clerk that he was not fit to take part. His postponement application for that reason had twice been refused.
- 5.8 I have no information before me to suggest that if I postpone the hearing today there is any prospect of the Claimant co-operating with the Respondent and the Tribunal to prepare for a further hearing, or being well enough to attend that hearing.

**Case Number: 1808072/2023**

***S-J Davies***

**Employment Judge Davies**

**10 September 2024**

Sent to the parties on:

11 September 2024

For the Tribunal:

A Dickinson