

the Employment Tribunal presented on 29 December 2018 (the **First Claim**), which the Respondent resisted.

- d) The First Claim was heard by the London South Employment Tribunal in May 2020, and was dismissed by the Tribunal as being without merit. The Claimant appealed the decision of the First Claim, but that appeal was rejected on 19 May 2022 as having been brought out of time.
 - e) The Claimant raised a grievance on 15 June 2022, which the Respondent did not uphold. There followed a day of ACAS Early Conciliation on 9 September 2022, before the Claimant presented a further claim to the Employment Tribunal on 10 September 2022 (with case number 2303196/2022, the **Second Claim**), again alleging race discrimination. The Respondent resists the Second Claim.
 - f) The Claimant raised a further grievance on 5 May 2023, which preceded a further period of ACAS Early Conciliation in the period 13 to 17 July 2023, before the Claimant presented a further claim to the Tribunal on 24 July 2023 (which case was given the claim number 2303792/2023, the **Third Claim**).
 - g) The Second Claim and the Third Claim are the claims in these proceedings. There have been various attempts in three Preliminary Hearings for Case Management (and two further such hearings were postponed at the Claimant's request) to define the lists of complaints and issues in those claims, and numerous Orders made for the Claimant to provide missing information. Still, the claims and issues remain undefined.
3. Today's hearing, listed on 21 August 2024, was to take place via video and was to consider the Respondent's applications to strike-out or attach deposit orders to some of the Claimant's complaints, to discuss the claims and responses, and to make case management orders. A final hearing to determine these cases has been listed for 5 to 8 November 2024.
 4. In anticipation of this hearing:
 - a) The Respondent compiled a draft list of complaints and issues, which it attempted to agree with the Claimant, without success;
 - b) The Claimant emailed the Respondent's solicitor indicating that there were further complaints missing from the draft list of complaints and issues, but did not reply to subsequent requests to clarify those missing complaints;
 - c) The Claimant wrote to the Tribunal and the Respondent on 13 September 2024, setting out the bases on which she resists the Respondent's application for a deposit order;
 - d) The Claimant emailed the Tribunal at 06:30 on 16 September 2024, attaching her 13 September document;

- e) The Claimant arranged for an email to be sent to the Tribunal on her behalf at 06:34 on 16 September 2024, attaching the same 13 September document;
 - f) The Claimant emailed the Tribunal on 16 September 2024 at 06:53, attaching her 13 September document;
 - g) The Claimant emailed the Tribunal on 16 September 2024 at 07:00 asking for an attached document (a screenshot of an email) to be considered in the hearing; and
 - h) The Respondent compiled a bundle for today's hearing, and sent draft submissions pertaining to its applications, along with the draft list of issues, to the Tribunal by email, copying the Claimant, on 20 September 2024.
5. The Respondent applied for today's hearing to be converted to an in-person hearing, given some difficulties that the Claimant has encountered attending previous hearings via CVP. The Tribunal emailed the parties yesterday, at 16:02, stating:
- " *Hearing on 24/09/24 has been converted to In person
Montague Court, 101 London Road, Croydon, Surrey, CR0 2RF".*
6. The Claimant replied to that email at 17:52 yesterday, in the following terms:
- "I will not be able to attend the CVP hearing tomorrow due to the late reply from the employment tribunal, I am not prepared for a CVP as a litigant in person
I will have to get guidance and someone to attend this sort of hearing with me.
Sorry for any inconvenience I am now not prepared."*
7. The Respondent replied to the Claimant, reiterating that the hearing is in-person, with the Respondent's solicitor saying that she would see the Claimant today.
8. The Claimant emailed the Respondent at around 18:10 saying that she can not attend the hearing with one hour's notice.
9. The Respondent replied at 19:00 confirming that the hearing was converted to in-person, reminding the Claimant that it had been listed since 21 August, and that the only change was that it was changed from being a CVP hearing to in-person, and saying that it was not clear why she could not attend. The Claimant did not reply.

The hearing today

- 10. The Respondent attended the Tribunal today in order to take part in that hearing. The Claimant did not attend.
- 11. The Tribunal clerk telephoned the Claimant at 10:31, using the telephone number for her on record, and then was provided with an alternative telephone number for her by the Respondent, which she tried at 10:52. The clerk checked with the

Tribunal's security team three times to see if the Claimant had arrived, but she had not.

12. The Employment Judge began the hearing, and obtained some of the background information set out above from the Respondent in relation to the Claimant's knowledge of the hearing.
13. The Respondent's solicitor also told the Employment Judge that the Respondent, while awaiting the Tribunal's consideration of its application for this hearing to be converted to an in-person hearing, had arranged for room in its office to be available for the Claimant, with a laptop, so that the Claimant could attend this hearing if it was to be held by CVP.
14. The Respondent expressed concern that the Claimant's conduct in repeatedly failing to define the list of complaints and issues, had now rendered the Final Hearing listed for November 2024 impossible, and observed that the Respondent has incurred considerable costs in trying to advance this matter, with no success.

Law

15. A prerequisite to considering a strike-out application is that there has been a proper identification of the issues in the case (*Cox v Adecco Group UK & Ireland and others* UKEAT/339/19).
16. Rule 47 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."

Consideration of the Respondent's applications

17. The Respondent applied for the hearing to proceed to consider its application for strike-out or a deposit order in the absence of the Claimant.
18. The Employment Judge did not consider that appropriate, in light of the fact that the draft list of issues is disputed by the Claimant.
19. The Respondent proceeded to ask the Tribunal to strike out the Claimant's claims pursuant to Rule 47.
20. Having considered the following information available to the Tribunal about the Claimant's non-attendance:
 - a) The Claimant was evidently informed of, and knew about, today's hearing;
 - b) The email from the Tribunal to the Claimant was clear in its terms that the CVP hearing was to be converted to an in-person hearing, and the Respondent emailed the Claimant twice after her 16:02 email to confirm that;
 - c) The Tribunal telephoned the Claimant twice;

- d) The Tribunal checked that the Claimant was not attending a CVP hearing room (she was not, as no CVP details had in fact been sent to the parties);
- e) This is the third hearing for case management in these matters that has proceeded, with two further such preliminary hearings having been adjourned;
- f) The Claimant has shown an evident reluctance to clarify her complaints and issues, and only the day before the hearing seemed to consider that she should now seek some guidance;
- g) The Claimant, while a litigant in person, has experience of the litigation process before the Employment Tribunal, in light of the First Claim and the previous preliminary hearings in these cases;
- h) The Respondent has made considerable efforts to advance these cases, meeting repeated resistance from the Claimant. There is no reason to think that scheduling a further hearing would result in a clarification of the claims and issues that have been unclear since 2022 in the case of the Second Claim, and 2023 in the case of the Second Claim; and
- i) There are many parties waiting for justice before this Tribunal, and the Claimant's lack of cooperation has delayed those other cases,

the Employment Judge considered that it is in the interests of justice that the Claims be struck-out for the Claimant's non-attendance pursuant to Rule 47. Further postponement of this hearing is not appropriate in light of the Claimant's clear decision not to attend, and the resources already spent trying to clarify her complaints and the issues between the parties.

Conclusions

21. The Claimant's claims are dismissed by reason of the Claimant's non-attendance.

Employment Judge Ramsden

Date 24 September 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>