



EMPLOYMENT TRIBUNALS

Claimant: Ms Ezzahra Azaanoun

Respondents: Kier Limited & Others

Heard at: Birmingham (by CVP)

On: 30 September 2024

Before: Employment Judge Meichen, Mr E Stanley, Mr J Reeves

Appearances

For the claimant: no appearance or representation

For the respondent: Miss I Brown, counsel

JUDGMENT AND REASONS

1. The claim is dismissed for the following reasons.
2. The final hearing in this case was due to start today at 10.30 am.
3. The claimant wrote to the tribunal (but not the respondent) at 10.23 am as follows:

"I have tried to call you as requested by my barrister's clerk, it seems that she has not prepared anything and is not going to the hearing. I was asked to ask for more time for her to negotiate a settlement.

I was discharged from hospital a couple of hours ago, I was given strong painkillers to help with ongoing health complications that I had recently and I would like for the hearing to be postponed as a reasonable adjustment, I will send medical records to explain this once I obtain them, I have tried to call the tribunal to make you aware of as soon as I could this but the line busy.

I am sorry for the inconvenience, I was looking forward to the resolving this matter."

4. The panel considered that this email disclosed no adequate reason to postpone the hearing, particularly because the application to postpone was put on medical grounds but the claimant did not provide any medical or supporting evidence. The panel further considered that as the claimant had said she had tried to call the tribunal she could access the video link to join the hearing.
5. The Employment Judge wrote to the claimant at approximately 10.40 am as follows:

"Any application to the tribunal must be copied to the respondent. Any application to postpone on medical grounds should be accompanied by medical evidence. The claimant should join the video hearing and the situation can be discussed. We will delay the start time of the hearing until 11 am to allow the claimant to join."

6. The claimant did not respond to that email and she did not join the hearing at 11 am.
7. Shortly after 11 am the tribunal clerk attempted to contact the claimant by phone. The number the tribunal had for the claimant did not connect. The tribunal asked the respondent if they had an alternative contact number to contact the claimant. They did not.
8. The panel decided to give the claimant a final chance. At approximately 11.16 am the Employment Judge wrote to the claimant as follows:

"The claimant has not joined the hearing at 11 am as directed and has not responded to the tribunal's email. The tribunal has also attempted to contact the claimant by phone without success. For the avoidance of doubt the claimant's application to postpone has been refused because of a lack of supporting medical evidence, although the panel has indicated a willingness to discuss the issues which may be affecting the claimant. If the claimant has not joined the hearing by 11.30 the tribunal will consider proceeding in her absence, including considering the strike out application."
9. The grounds for the respondent's strike out application included that the claimant had provided her witness statement very late (around 1 pm the working day before the hearing) and that it was very brief and did not address the allegations in her claim. We had already read the claimant's statement. It did not provide sufficient evidence in support of any of her claims.
10. The claimant did not respond to the tribunal's second email and she did not join the hearing at 11.30 am.
11. The panel decided to start the hearing because we considered we had waited long enough and done our best to contact the claimant. The hearing started at 11.33 am. The respondent invited the panel to determine the strike out application or dismiss the claim under Rule 47.
12. Rule 47 provides as follows:

Non-attendance

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.

13. The panel decided to dismiss the claim under Rule 47. We considered the only information available to us about the claimant's absence which was her email sent at 10.23 am. We had already decided that did not contain any adequate reason to postpone and we had communicated that to the claimant.
14. The reasoning also appeared incomplete and/or unclear because:
 - 14.1 The claimant had not previously indicated that she was to be represented at this hearing.
 - 14.2 We understand the claimant had been, briefly, represented by a barrister but he was male.
 - 14.3 If a barrister had been instructed why would she not have prepared?
 - 14.4 The email suggested the claimant had been admitted into hospital but she had been communicating with the tribunal the working day before the hearing and had not explained anything about when and why she had been admitted.
 - 14.5 The claimant did not specify the health problems she had been experiencing or explain why she needed a postponement as a reasonable adjustment.
 - 14.6 Why would the claimant be discharged from hospital first thing in the morning (i.e. a couple of hours before 10 am)?
 - 14.7 Why could the claimant not join the video hearing if she was well enough to phone the tribunal, at least to explain the situation?
15. We considered that the reasons available for the claimant's absence were wholly inadequate.
16. We further considered that we had done all we could reasonably be expected to do to contact the claimant. She had apparently ignored our emails. We had waited over an hour for the claimant to respond.
17. In these circumstances we decided it was just, fair and proportionate to dismiss the claim under Rule 47.
18. By the time the hearing concluded it was around 12.30 pm. The claimant had still not attempted to join the hearing or respond to our emails.

Employment Judge Meichen 30.9.24