



EMPLOYMENT TRIBUNALS

Claimant: Mr K Sivarajah
Respondent: The Co-Operative Group Ltd

Heard at: Watford **On:** 6 January 2025

Before: Employment Judge Dick

Representation

Claimant: [Did not attend; but see post-script below]
Respondent: Miss Bibia (litigation manger)

JUDGMENT

The claim is dismissed (i.e. all remaining complaints) under rule 47 as the claimant failed to attend the hearing.

REASONS

1. On 19 April 2024 the claimant did not attend the preliminary hearing in this case. When contacted by my clerk that morning on the telephone the claimant said that he had been unaware of the hearing date and in the circumstances I was prepared to accept the possibility that the notice of hearing had been lost in the post. I therefore relisted the case for another hearing on 26 June 2024. I also made an order for the claimant to provide further information about his claim in writing, observing that the claim form was severely lacking in the detail which the Tribunal would require to deal with the claim. The claimant responded to that order in writing in time.
2. The hearing of 26 June 2024 was dealt with by my colleague Employment Judge (“EJ”) S Matthews. The claimant attended on that occasion and EJ Matthews was able to make some progress in clarifying the nature of the claim by asking the claimant about it. EJ Matthews identified complaints of disability discrimination and detriment for making protected disclosures (“whistleblowing”) and an unparticularised claim for “other payments”. EJ Matthews dismissed the complaints of unfair dismissal and race, sex and age discrimination and listed a further hearing (i.e. today’s hearing) to deal with, amongst other things, finalising the list of issues and considering the claimant’s

application to amend his claim. One of the orders made by EJ Matthews was that by 24 July 2024 the claimant was to provide a document setting out the precise wording of any complaints and allegations he wanted to include in his particulars of claim; the claimant was also to provide further evidence and information about his disability by 24 July and 21 August 2024 respectively. Since the claimant was present he would have heard EJ Matthews make those orders and would have been aware of the date of today's hearing. The orders were sent out in written form to the parties on 20 August 2024.

3. By 11 September 2024, the claimant had not yet responded to the orders and the respondent submitted a written application for strike out (under what is now rule 38 (c) and (d), on the basis that the claimant was failing to actively pursue his claim and/or had not complied with the Tribunal's order) or, in the alternative, for an unless order
4. The claimant responded on 17 September 2024. He sent an email which said that he was in receipt of the orders and had been on holiday. He asked to be allowed to comply by 23 September 2024. That request was not formally dealt with, but the claimant did indeed on 23 September provide a detailed document headed "Claimant's additional grounds". In very brief summary, the document at least arguably sets out detailed grounds for complaints of disability discrimination (and perhaps also victimisation) and whistleblowing.
5. So far as I am aware 23 September 2024 was the last time the claimant contacted the Tribunal. He did not attend today's hearing, which was listed for 10 a.m. My clerk telephoned him twice before 10:30, leaving a message when he did not pick up the phone. The claimant still had not attended by 10:45. My clerk confirmed that there had been no recent email correspondence from the claimant. A bundle for today's hearing had been emailed to the claimant by the respondent, but Miss Bibia for the respondent told me that she was not aware of any recent telephone or email correspondence *from* the claimant.
6. Miss Bibia submitted that I should hear the respondent's application for strike out in the claimant's absence. I did not consider it appropriate to do that as there had been some (albeit late) compliance, which the claimant might be in a position to explain had he attended. I did however consider it appropriate to apply rule 47:

Non-attendance

47. If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

7. I considered all of the above information. The claimant had already been afforded the benefit of the doubt having failed to attend one hearing. Although had had engaged with the claim after that, his compliance with the Tribunal's later orders was partial and the lack of full compliance was largely unexplained.

He was aware of today's hearing and no explanation for his absence was apparent. I therefore concluded that it was in the interests of justice and in accordance with the overriding objective for me to exercise my discretion to dismiss the claim under rule 47. In giving oral reasons I did explain that in these circumstances it was open to a party to apply for a reconsideration of the decision to dismiss, but the onus would be on that party to show a good reason for the failure to attend and I explicitly made no indication about what my approach to any such application might be.

Post-Script

8. At about 11.40 a.m., as I was preparing these reasons I was informed that the claimant had just arrived. My initial inclination had been to ask him to come in to the Tribunal room to explain why he had not attended. However on reflection I considered that it would be inappropriate to do that given the absence of the respondent and given also that I had already (orally) dismissed the claim. Instead I asked my clerk to explain to the claimant that his claim had been dismissed and that if he wished to ask me to reconsider that decision he would have to do provide reasons in writing within 14 days (see rule 69)

Employment Judge Dick

6 January 2025

SENT TO THE PARTIES ON
23 January 2025

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FOR THE TRIBUNAL OFFICE

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