



EMPLOYMENT TRIBUNALS

Claimant: Mr D Masih

Respondent: Mitie Limited

Heard at: Birmingham

On: 12 May 2025

Before: Employment Judge Swann Sitting with Mrs R Forrest
Mrs G Hammersley

Representation

Claimant: No appearance

Respondent: Ms Quigley of Counsel

JUDGMENT having been sent to the parties on 15 May 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Background

1. This case was listed for final Hearing for six days before the tribunal commencing on the 12th of May 2025 to determine the claimant's various claims of discrimination; detrimental treatment by way of raising protected disclosures; that he was automatically unfairly dismissed by raising protective disclosures and also ordinarily unfairly dismissed.
2. There had been two more recent Preliminary hearings of significance, firstly before Employment Judge Kelly on the 20th of August 2024 and secondly before Employment Judge Connolly on the 26th of November 2024. At the first Preliminary hearing attended by both parties via video link a discussion took place about preparation for the final Hearing and a further attended Preliminary hearing was set down by Judge Kelly for the 26th of November 2024 to consider (amongst other matters), the claimant's application to amend his claim to add further new disclosures and detriments to the claims then before the tribunal. Judge Kelly within her orders directed that the claimant provide further particulars of the details of

the proposed amendments themselves, so that that the tribunal could understand the matters it was having to determine and respondent the case it had to meet and which was opposed.

3. At the hearing before Judge Connolly on the 26th of November 2024 the respondent was represented by Counsel, there was no attendance by the claimant. On the 23rd of November the claimant had written to the tribunal seeking a postponement of the said Preliminary hearing due to a medical emergency. There were various attachments to his said email application, and the postponement request was objected to by the respondent. On the 25th of November 2024 Judge Wederspoon treated the application as a postponement request and refused the same. According to the record of the Preliminary hearing that then followed on the 26 November, promulgated by Judge Connolly, there was no further contact from the claimant. Nevertheless, Judge Connolly went on to consider the matters before her (as she records) and heard from Counsel for the respondent and refused the application to amend. As she further records, the claimant had failed to provide the further particulars relating to the amendment application as ordered by Judge Kelly above. The final Hearing was to remain listed to commence on the 12th of May 2025.
4. Given that the claimant had not provided the above further particulars nor had attended at the hearing on the 26th of November as ordered, the respondent submitted that it may make application for costs arising from the day. Judge Connolly in her orders noted that if the respondent was to make an application for costs it should by the 10th of January 2025, confirm if it was pursuing such an application and to submit details of the costs sort and the amounts to both the tribunal and the claimant. The claimant was ordered if he wished for the tribunal to have regard to his ability to pay any such costs, that he should provide documentary evidence about his income and outgoings two weeks prior to the final Hearing. It was subsequently directed by the tribunal, that the said costs application should be dealt with at the final Hearing.
5. On the 6th of May 2025 following an email application with attachments was made by the claimant for a postponement of the final Hearing on the grounds that he was too ill to attend , Employment Judge Gidney having considered the same, on the same day refused the postponement notifying the claimant that in his view there was no current medical evidence produced by the claimant to sustain his submission that he was too ill to attend. It was ordered by Judge Gidney that the final Hearing should proceed as listed. On the 7th of May the claimant submitted a further email to the tribunal with some 22 attachments asking for a review of the refusal to postpone and to take the attachments into consideration. That email and those attachments were before the tribunal at the beginning of the Hearing on the 12 May.
6. At the Hearing today the tribunal had before it bundles of documentary evidence and witness statements from the respondent and a witness statement from the claimant, (which as submitted by the respondent was in effect no more than a chronology of the major events he was relying on). The respondent was represented by Miss Quigley of cancel. There was no appearance by the claimant so the tribunal took note of and

considered the aforesaid email from the claimant with the 22 attachments referred to above. The tribunal also considered the information that it had on the file and made enquiries through its Clerk as to the whereabouts of the claimant both by telephone and physically within the building. There was no response in respect of either of those enquiries. The respondent therefore made applications for the dismissal of the claim and for an order for costs arising from the Preliminary hearing on the 26th of November 2024. The tribunal heard no evidence from the respondent and the applications were dealt with by way of oral submissions presented by Counsel for the respondent.

7. The relevant law

8. Rule 47 of the **Employment Tribunal Procedure Rules 2024** deals with the non-attendance of a party. More specifically it records as follows: *“if a party fails to attend or 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 practical about the reasons for the party’s absence.*
9. Rule 74 of the aforesaid Tribunal Procedure Rules, deals with applications for costs or preparation time orders. More specifically rule 74(3) records as follows *“the tribunal may also make a cost order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order rule or practice direction or where a hearing has been postponed or adjourned”*. In addition the tribunal has also taken note of the guidance and principles arising from the decided case of **Serco v Wells UKEAT/0330/15/RN**

10. The applications

11. Counsel for the respondent made two applications as referred to above. Firstly, she applied for the whole of the claim to be struck out on the basis that the claimant had failed to attend without good reason. That the application to postpone should be refused on the basis that the claimant’s email and attachments of the 7th of May did not disclose anything further by way of medical evidence than that which had already been considered by Judge Gidney earlier in the week and which said postponement application was refused by him. That the claimant had failed to set out the particulars required by Judge Kelly following the hearing in August 2024 and that in the absence of any oral evidence from the claimant, his witness statement and indeed the documentary evidence before the tribunal did not disclose any case to answer in respect of the claims of automatic unfair dismissal, detrimental treatment or discrimination. That in regard to the claim of unfair dismissal that the respondent would have argued in any event that it had dismissed the claimant fairly by reason of misconduct and would have been able to sustain that argument had the claimant attended.
12. The second application was for costs arising from the aforesaid Preliminary hearing to consider the claimant’s application to amend on the 26th of November which the claimant had failed to attend or provide further

particulars of as ordered by Judge Kelly. It was submitted that the respondent had set out in accordance with the orders of Judge Connolly the basis of its application and details which was limited only to Counsel's fees and travel costs for attending the hearing on the day at which the claimant's amendment application was dismissed. It was submitted that the claimant had not produced any details of his means or any other matters that he wished the tribunal to take into account as ordered by Judge Connolly prior to the final Hearing and therefore those costs should now be awarded in favour of the respondent.

13. The conclusions

14. In reaching the following conclusions the tribunal has taken into account the information before it and correspondence on the tribunal file received from both the claimant and the respondent, the relevant Procedure Rules and case law cited above and the oral applications made today on behalf of the respondent. As recorded above. It has heard no oral evidence.
15. Having regard to the application for the dismissal of the claim in the absence of the claimant and having carefully considered the claimant's above mentioned email of the 7th of May with attachments, the tribunal was satisfied that there was nothing within those attachments that added anything new or further in terms of medical evidence preventing the claimant from attending the Hearing today than that which was already before Judge Gidney on the 6th of May. Judge Gidney refused the postponement of the final Hearing and taking into account the principles arising from the said decided case of **Serco v Wells UKEAT/0330/RN** the tribunal was satisfied that there was no material change in circumstances that could justify the postponement of the final Hearing. The tribunal was satisfied taking into account the submissions made by the respondent (in summary above) and the information available to it, that it was appropriate in light of the fact that there was no attendance by the claimant (and therefore no oral evidence that could be presented by him), that the claim should be dismissed in accordance with rule 47 of the aforesaid Procedure Rules. The respondent's application in this regard therefore succeeds and the claim is dismissed.
16. Have regard to the application for costs incurred by the respondent at the Preliminary hearing on the 26th of November 2024, there was no evidence on the tribunal file to the effect that the claimant had in accordance with Judge Connolly's order responded to the application for costs made on January 10, 2025 by the respondent and set out any means or arguments that he would wish to tribunal to take into account when considering the costs application. The Preliminary hearing was set down in principle to deal with the claimant's application to amend his claim which was opposed by the respondent. He failed as ordered to appear at that hearing and to provide any of the further particulars relating to the amendment application also ordered by Judge Kelly. The tribunal concludes therefore that the claimant should be ordered to pay the respondent its costs incurred by its Counsel on that day in the sum of £902.70 in accordance with rule 72 (3) of the said Employment Tribunal Procedure Rules of 2024.

Approved by

Employment Judge Swann

Date 11 June 2025