EMPLOYMENT TRIBUNALS

Claimant: Mr M Latif

Respondent: Vodafone Limited

HELD AT: Manchester **ON:** 14 August 2017

BEFORE: Employment Judge Holmes
Mrs P J Byrne
Ms S Khan

REPRESENTATION:

Claimant: Not in attendance
Respondent: Ms Snocken, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant having failed to attend the hearing his claims are dismissed pursuant to rule 47 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. The Tribunal this morning has convened to hear, over five days, the claimant's complaints of race and religious belief discrimination. This hearing is the second time that the matter has been listed for a final hearing. It was originally listed on 20-24 February 2017, but that was postponed following a preliminary hearing on 2 February 2017. On that occasion the Employment Judge made an Unless Order in relation to a Case Management Order, and also ordered the claimant to pay the respondent's costs. The Notice of Hearing that went out with the previous preliminary hearing set this date, so it has been set for a long time, and indeed it is in the order sent to the parties on 8 February 2017. So this hearing date has been fixed for some six months or so.

2. At 19:44 hours on the preceding Friday night, 11 August 2017, the claimant sent an email to the Tribunal , and indeed the respondent's solicitors, who in fact did

pick it up over the weekend, and were aware of it before they arrived this morning. In it he refers to the hearing ,and explains that he has been working in Brussels at the new NATO HQ as an IT consultant since 17 July 2017, and that he has been residing and working in Brussels since 14 July 2017. He goes on to say that since the start of the case the respondent has desired to come to a settlement out of court, and on a number of occasions there had been some discussions about this. He has started this work at the NATO HQ, which he says is very confidential, and as a result of that he is unable to take any time off work. Consequently he says that with a "heavy heart" he makes the request which he goes on to make, that this hearing be postponed. He refers to the fact that the respondent recently decided to close off all communication, despite having had some settlement discussions, but he is required to remain in Brussels, and therefore makes this application.

3. The Tribunal having received that email made some further enquiries of the claimant, and he has responded this morning at 9:44 to a phone call from the Tribunal , which enquired as to his postal address in Belgium , which he declined to give, referring to his postal address in the UK as being the most efficient way of receiving documents, and in relation to an enquiry that the Tribunal made as to how long his contract was . He said that it was until "the end of December". So from what he says in his previous email, it seems he will be unavailable for any further hearing until at least the end of December and that, of course, is assuming that this contract is not renewed.

4. In these circumstances Ms Snocken of counsel who appears for the respondent today makes an application under rule 47 of the 2013 Rules of Procedure that the Tribunal dismiss the claims. In support of that she refers to the claimant's email, and the discussions that he has referred to therein. It was proposed at one point that we would be shown correspondence in relation to the settlement negotiations, but the Tribunal's view is that this is "without prejudice" correspondence and whilst the fact of settlement negotiations is not "without prejudice" the contents, of course, are. Ms Snocken suggested that the claimant had waived any privilege in his email of 11 August 2017, by referring to these negotiations, but the Tribunal does not consider that referring to the fact of settlement negotiations quite does that ,.So, to that extent it has declined to see the contents of those communications and it will simply act on the basis of the claimant's assertions, which are not disputed, that there were settlement negotiations, but which came to nothing and eventually, and probably recently, ceased.

5. That left the claimant in the position, of course, of this hearing being listed, and, indeed of course being, for the second time. The claimant appears to be inviting the Tribunal to postpone the matter, (although he does not say until when), simply on the basis that he hoped or even expected that there would be a settlement. Maybe he did, but that is a matter entirely for him, and as a claimant, of course, he takes a chance, if there is no settlement, that his case will in fact proceed as it is listed to do.

6. In relation to rule 47 this provides:

> *"If a party fails to attend or 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."

7. Dealing with that latter part, we know the reasons for the party's absence, he has explained those in his email of 11 August 2017 and they are essentially that he has chosen not to attend this hearing because of his alternative employment in Brussels, in circumstances where he hoped or expected that there would be a settlement, and this hearing would not be necessary. Those are the reasons why he makes an application, and they are the reasons why he is not present today.

8. In terms of the Tribunal's power, rule 47 gives it a complete discretion and does not require, unlike other rules such as the costs or strike out rules, a threshold of unreasonable conduct. The respondent would in any event say that, if that was the case, that threshold would be reached, because they submit that in dealing with the matter this way the claimant has indeed acted unreasonably, but that is not a prerequisite. Ultimately this is a matter of the exercise of our discretion, and in doing so we take into account all the circumstances, and all the information before the Tribunal.

9. That information is that having had one hearing postponed earlier in the year, and being made the subject of an Unless Order, and indeed ordered to pay costs, this was the second time the matter was listed and the claimant, of course, was under a duty to make preparations for the hearing.

10. The Tribunal appreciates that obtaining employment in these circumstances as he did was a development in the case which he could not have anticipated, and probably did not anticipate back in February 2017, but when it happened, of course, it was open to him at that point to inform the Tribunal and the respondent. Given that it would probably be unlikely for anybody, let alone anyone working in the circumstances in which he was, that they could, having just started new employment, then be given five days off for a Tribunal claim in another country, that the sensible thing to have done would have been at that point to seek a postponement. Whether that would have been granted or not would have depended to some extent on the respondent's views, but it may well that the Tribunal would have considered in those circumstances, if it was given sufficient notice, that that was not an unreasonable request, and that the claimant may well have succeeded at that point. But he made no such application, and indicated none, apparently, to the respondent. He simply left the matter, apparently hoping that it would in fact settle.

11. Litigation of this nature is adversarial. Parties, of course, often do settle and that, of course, is always to be encouraged, but any claimant pinning his or her hopes on a settlement taking place at the eleventh hour instead of attending a hearing takes a considerable risk if they do not make arrangements to attend this hearing. Clearly the claimant has not done that, and it does seem likely that, since he obtained that employment in Brussels in July i.e. within a month of the hearing date, from then on it was always unlikely that he would be attending this hearing.

12. In those circumstances the Tribunal is satisfied he took that risk, and when settlement did not occur, then the claimant took the risk of the hearing continuing, as indeed it has done, and of the consequences of his non attendance.

13. In those circumstances, particularly given the history, (but even without it the Tribunal would probably have made the same decision), of the hearing in February 2017 , and the fact that it is the second time the matter has been listed for a hearing, the Tribunal does, having considered all the information before it, exercise its discretion and considers that the only appropriate course open to it today is to dismiss the claimant's claims, and they are dismissed.

Employment Judge Holmes

Dated: 14 August 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 August 2017

FOR THE TRIBUNAL OFFICE