



EMPLOYMENT TRIBUNALS

Claimant: Miss S Nega

Respondent: The Dudley Group NHS Foundation Trust

Heard at: Birmingham

On: 26 October 2018

Before: Employment Judge Dawson

Representation

Claimant: No attendance

Respondent: Ms B Worthington, solicitor

JUDGMENT

1. The hearing is adjourned to 10.00 a.m. on 15th November 2018 at the Birmingham Employment Tribunal, 13th Floor, Centre City Tower, 5-7 Hill Street, B5 4UU. The parties are to arrive by 9.30 a.m.
2. The Respondent has applied for an order that the Claimant pays the costs which have been wasted by this adjournment. That application will be decided at the next hearing on 15th November 2018. The Claimant should attend the hearing ready to deal with that application.

REASONS

1. The matter was listed today for the determination of an application for a strike out or deposit order.
2. At 02:51 hours on 26 October 2018, the Claimant emailed the Employment Tribunal and the Respondent's solicitor requesting an adjournment on the basis that she had not been feeling well over the last few days and "have stopped vomiting since last night". I infer that there should be a "not" before "have" and "stopped" in that quotation.
3. The Respondent resisted the application for an adjournment arguing that

- a. it had sent a skeleton argument to the Claimant in respect of this hearing on 23 October 2018,
 - b. on 25 October the Claimant had emailed the Respondent referring to uncertainty about whether she would have a witness at the hearing or not but making no reference to illness,
 - c. the Claimant is due to work (for the Respondent) tomorrow but has not telephoned in sick, which would be expected given that the Respondent has a policy that staff should not attend work within 48 hours of their last episode of vomiting,
 - d. in the circumstances the Employment Tribunal should reject the veracity of the Claimant's application.
4. I understand the Respondent's skepticism for the reasons that it has advanced. I have, however, also taken note of the fact that the Claimant did attend the last preliminary hearing and has engaged in the Employment Tribunal process, writing to it on 18th June 2018, 29th June 2018 and 20th July 2018. That engagement suggests that the Claimant is pursuing her claim and has not used sickness as an excuse to avoid dealing with matters in the past. However, I also take account of the fact that the hearing today is of a somewhat different character to the earlier one.
5. I have reminded myself of the decision in *Teinaz v Wandsworth* [2002] IRLR 721 and the dicta that "*A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment*".

6. The order listing the matter today anticipated the attendance of the parties and allows for the possibility of cross examination of witnesses.
7. If, as she implies, the Claimant had only recently started vomiting when she emailed the Employment Tribunal, it would be unreasonable to expect her to be able to provide medical evidence at the time of her application to adjourn. On balance I consider that it is in the interests of justice to grant the adjournment sought. However, the Claimant must provide further explanation of her illness and her inability to attend, at the next hearing. If she does not do so satisfactorily then it is open to the tribunal to order her to pay to the Respondent the costs thrown away by this adjournment.

Employment Judge Dawson
26 October 2018