



EMPLOYMENT TRIBUNALS

Claimant: Mr M Khan

Respondent: Positive Solutions Limited

HELD AT: Manchester

ON: 10 February 2020

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: Not in attendance or represented

Respondent: Miss C Hollins, Solicitor

JUDGMENT AND UNLESS ORDER

The judgment of the Tribunal is that :

1.Unless by 27 February 2020 the claimant further explains and confirms in writing to the Tribunal the reasons why he failed to attend or be represented at, or otherwise to communicate with the Tribunal in relation to the preliminary hearing of his claims listed for 12 February 2020 at 10.00 a.m.,

the claimant's claims will be dismissed pursuant to rule 47 of the 2013 Rules of Procedure.

2.Further, as the claimant claims unfair dismissal, and he lacks the necessary qualifying service of two years required by s.108 of the Employment Rights Act 1996, the Tribunal proposes in any event to strike out his complaint of unfair dismissal , as it has no jurisdiction to hear it. If the claimant wishes to advance any reason why this proposal should not be carried out , he must show cause in writing by **27 February 2020**.

REASONS

1. The Tribunal today was listed to hear a preliminary hearing of the claimant's complaints of unfair dismissal , race discrimination, and religious belief discrimination. Notice of Hearing was sent to the claimant's representative, Miss Rabia Khan on 12 December 2019.

2. The respondent attended and was represented by Ms Hollins , solicitor. When it became apparent that neither the claimant nor any representative had attended the Tribunal, the clerk made enquiries by telephoning the claimant. He was at home, and informed the clerk that he was unaware of the preliminary hearing being held this morning , as he had not been notified about it.

3. The clerk also attempted to contact the claimant's representative Miss Khan, but there was no answer on her mobile telephone number. The clerk telephoned the claimant again, on the instructions of the Employment Judge, to enquire if he could attend later in the day, given that he lived in the Manchester area. He informed the clerk that he could not do so, as he was suffering from flu - like symptoms and had been advised to remain at home.

4. The Employment Judge accordingly held the hearing with the respondent's representative , and her client, present. He noted that the respondent had prepared an Agenda, and that this had been sent to the claimant's representative, but there had been no response. Indeed , Ms Hollins confirmed that there had been no communication whatsoever from the claimant's representative.

5. In these circumstances Ms Hollins invited the Tribunal to dismiss the claimant's claims pursuant to rule 47 of the Tribunal's rules of procedure. This rule provides that, if a party does not attend or is represented at the hearing, provided that the Tribunal has first considered all the information which is available to it , after any enquiries that may be practicable about the reason for the party's absence, the Tribunal may dismiss the claim.

6. Having made these enquiries , and it appearing that the claimant had probably been let down by his representative, who had neither informed him about the hearing, nor made arrangements to attend it on his behalf, the Employment Judge was not minded to dismiss the claimant's claims, without an opportunity for the claimant to confirm in writing his explanation for his non – attendance at, or any communication with, the Tribunal, and his representative's apparent failure to communicate with him, or anybody else, about these claims.

7. Consequently the Employment Judge has made the orders above . Additionally however , and having considered the claims that the claimant makes , his claim of unfair dismissal would appear to be one that the Tribunal has no jurisdiction to hear as the claimant was only employed for just over one year , when the requisite period of qualifying service to present a claim of unfair dismissal is two years . Whatever the position in relation to the claims going forward, the Tribunal proposes to strike out the unfair dismissal claim on this basis , unless the claimant can show cause as to why it should not be.

8. By way of assistance to the claimant (and possibly his representative) a dismissal can be discriminatory, but that does not make it unfair for the purposes of the Employment Rights Act 1996 (only dismissals for pregnancy or maternity being automatically unfair for these purposes). Thus whilst the claimant may be able to complain that his dismissal was an act of race discrimination, he is not entitled to present a claim of unfair dismissal on the basis of the information that he has put forward to the Tribunal. He therefore is required to show cause why the Tribunal should not strike out his unfair dismissal claim in any event.

9. If the claimant is able to satisfy the Tribunal that his other claims should proceed, and a further preliminary hearing is listed, then before that preliminary hearing takes place the claimant should also, as the Employment Judge would have ordered had he attended today, provide further information about his discrimination claims. Whilst it is clear that he is making complaints of race discrimination, the document attached to his claim form is in narrative terms. The respondent has attempted to extract from it the precise claims that the claimant is making. He should however prepare further particulars of these claims, so as to extract from this narrative, preferably in numbered or lettered paragraphs, the dates upon which, and the person or persons by whom, any acts of discrimination were perpetrated. Further it is presumed that the claimant is making claims of direct discrimination. Such claims require either actual comparators (i.e. the claimant can point to white persons whose circumstances were the same as the claimant's, and were not treated in the same way that he was), or, where there are no actual such persons, a hypothetical comparator. If there is any actual comparator, any such actual person or persons should be identified. It will save time at any future preliminary hearing if the claimant can prepare these necessary details in advance of it.

10. Further, as the respondent has pointed out in the response, whilst the claimant has complained of race discrimination and has set out details from which the Tribunal can see how the complaints he makes are related to his race, he has failed to make any reference to his religious belief, and has failed to specify which, if any, of the complaints he makes are advanced on the grounds of religious belief as opposed to, or in addition to, on the grounds of his race. These aspects of his claims also need clarifying.

Postscript : the claimant's email.

11. During the hearing the claimant did, at 10.32, send an email to the Tribunal which was subsequently placed before the Employment Judge. In that email he apologised to the Tribunal, which the Employment Judge accepts and appreciates, and confirmed the information that he had provided to the clerk over the telephone. He had not been informed by his representative of the hearing, otherwise he would have prepared for it. He describes Miss Khan as his "legal rep", although it is unclear to the Tribunal as to whether she is acting in a professional capacity. He said that she was quite unwell herself, and had been unable to provide any service to him. He asked the Tribunal to postpone the hearing to a future date to allow him to find representation and to recover from his illness. In relation to his illness he said he had been asked to stay indoors and to quarantine himself as he had flu-like symptoms that mimicked the Coronavirus. He also has other conditions which may affect his ability to conduct the claims.

12. The claimant expressed some surprise that he had not been communicated with via email phone or letter. This, however, is a consequence of his having a representative, with whom the Tribunal has corresponded. The Tribunal does not correspond with parties and their representatives, and will only correspond with the representative, which is doubtless why the claimant was unaware of today's hearing.

13. Whilst the claimant has in his email provided some explanation for his inability to attend the hearing, the Employment Judge also would like to have an explanation

from Miss Khan as to why she has not engaged the respondent in the preparation of the preliminary hearing , and why she failed , apparently, to notify the claimant about the preliminary hearing. The claimant should take steps to obtain this information from her, or to get her to communicate directly with the Tribunal. If however he is unable to do so, he should explain to the Tribunal any further difficulties that he encounters with his representative.

14. For the time being it will be presumed by the Tribunal that all future communications should now be made directly to the claimant , and not his representative. The Tribunal will amend its file accordingly unless and until advised to the contrary. It is presumed that the email address on the email that was sent this morning is one that the claimant would wish the Tribunal, and the respondent's representative, who also needs to be able to contact the claimant, should use.

15. The claimant should be aware that the respondent has intimated that an application costs may be made, but no formal application is yet before the Tribunal. In terms of responsibility for any such costs if awarded, unless Miss Khan is a professional representative, it may be that no costs order can be made against her, and any such costs as the Tribunal may award would be the responsibility of the claimant himself. These however are matters that do not yet require consideration, but may arise in the future.

16. The effect therefore, is that the claims will be struck out if the claimant does not comply with the terms of the order above. If he does, the Employment Judge will then consider, whether to dismiss the claims under rule 47. If the claims are not dismissed, the Tribunal will need to hold a further preliminary hearing, at which , particularly if the claimant provides the further details required, more progress can be made.

Employment Judge Holmes

Date: 12 February 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 February 2020

FOR THE TRIBUNAL OFFICE