



# EMPLOYMENT TRIBUNALS

**Claimant (1):** Mr A Smith  
**Claimant (2):** Ms A Liddle

**Respondent:** North East Autism Society

**HELD at Newcastle CFT**

**ON: 15 September 2022**

**BEFORE:** Employment Judge Johnson

## REPRESENTATION:

**Claimants:** No attendance  
**Respondent:** Mr T Shears, Solicitor

# JUDGMENT

1. Pursuant to Rules 37 and 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the first claimant's complaints of unfair dismissal and unlawful discrimination on the grounds of religion/philosophical belief are dismissed.
2. Pursuant to Rules 37 and 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the second claimant's complaints of unfair dismissal, unlawful disability discrimination and unlawful discrimination on the grounds of religion/philosophical belief are dismissed.

# REASONS

1. This matter came before me this morning by way of a postponed private preliminary hearing by telephone, the original hearing having taken place on 1 July 2022. The notice of preliminary hearing was sent to the claimant's representative Mr Stephen Morris of the Workers of England Union and to the respondent's representative Mr Shears of Ward Hadaway Solicitors on 24 August 2022. That notice was sent to the claimants' representative at the address to which all previous correspondence had been sent. The Tribunal file shows that the notice was sent to Mr Morris by email timed at 10:21am on 24 August. I am satisfied that the notice was properly served upon and received by Mr Morris. The notice specified that the hearing would commence at 11.30 and had been given a time estimate of 90 minutes. At 11.30 Mr Shears joined the conference call but by 11.45 no one on behalf of the claimants had joined the conference call. At that time I took the decision that nobody would be joining the conference call on behalf of the claimant.
2. I then invited Mr Shears to make any applications which he considered appropriate in all the circumstances. Mr Shears made applications pursuant to Rules 37 and 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Rule 47 permits the Tribunal to strike out a parties' case if that party fails to attend or be represented at the hearing. Rule 37 permits the Tribunal to strike out at any stage of the proceedings, either on its own initiative or on the application of a party, all or part of a claim on any of the following grounds:-
  - a. That it is scandalous or vexatious or has no reasonable prospect of success.
  - b. That the manner in which the proceedings had been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious.
  - c. For non-compliance with any of these Rules or within order of the Tribunal.
  - d. That it has not been actively pursued.
3. The thrust of each claimants' case is that they were unfairly dismissed for refusing to take the Covid-19 vaccine, which their employer required them to do because they worked in a care home, which was subject to government regulations requiring all staff to be so vaccinated or to have a clinical exemption. Both claimants also pursued complaints of unlawful disability discrimination. Mr Smith's complaint of unlawful disability discrimination was dismissed on 15 June 2022 following his withdrawal of that complaint. Both claimants also pursue a complaint of being subjected to unlawful discrimination on the grounds of their religion/philosophical belief.
4. At the hearing on 1 July both claimants were ordered to provide further information about their philosophical belief and Ms Liddle was required to provide a disability impact statement in respect of her complaint of unlawful disability discrimination. Both were ordered to provide that information by 15 July 2022. Both failed to comply with those orders. Strike out warnings were issued by Judge Sweeney on 1 August 2022 and Judge Jeram on 10 August 2022. Both claimants subsequently provided under cover of a letter dated 16 August, disability impact statements and philosophical belief statements. The disability impact statement from Miss Smith is irrelevant, because his complaint of unlawful disability discrimination has already been dismissed. The disability impact statement from Ms Liddle effectively states

that her health deteriorated after she was dismissed by the respondent and that this deterioration in her health amounts to a disability as defined in section 6 of the Equality Act 2010. That displays a manifest misunderstanding of the workings of the protection for disabled persons which is provided by the Equality Act 2010. The disability must exist at the time of the alleged act of discrimination. That is clearly not the case with Ms Liddle. That complaint accordingly has no reasonable prospect of success.

5. Neither claimant has properly identified a “religion” or “philosophical belief”, amounts to something which is:-
  - Genuinely held.
  - Not simply an opinion or view point based on the present state of information available.
  - Concerns a weighty and substantial aspect of human life and behaviour.
  - Attains a certain level of cogency, seriousness, cohesion and importance.
  - Is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.
6. In the case management summary attached to the Orders made on 1 July, I drew to the attention of the claimants and their representative a number of decisions of the Employment Tribunal and Employment Appeal Tribunal dealing with the fairness of dismissal for refusing to take the Covid-19 vaccine in circumstances similar to those of the claimant. The claimants and their representative have not addressed those matters since being provided with that information.
7. The Tribunal and the respondent’s representative had not been notified in advance of today’s hearing that neither claimant would attend or be represented. Neither claimant has properly complied with the earlier Orders made on 1 July 2022. Two strike out warnings have had to be issued before any responses obtained from the claimants and/or their representative. Neither claimants nor their representative attended today.
8. I am satisfied under Rule 47 that this is a case where the Tribunal should dismiss the claims due to the claimants’ non-attendance. Pursuant to Rule 37, I am satisfied that none of these claims have any reasonable prospect of success. Furthermore, the claimants remain in breach of the Orders made on 1 July, by failing to properly set out their claims of unlawful disability discrimination and discrimination on the grounds of religion/philosophical belief. I am further satisfied that none of the claims have any reasonable prospect of success, based upon the information available to me. In my judgment, the claims are not being actively pursued.

9. For those reasons, all of the above claims are struck out and dismissed.

G Johnson

---

Employment Judge Johnson  
Date: 27 September 2022

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.