



EMPLOYMENT TRIBUNALS

Claimant: Miss K Paczkowska
Respondent: R-Com Consulting Limited
HELD AT: Manchester **ON:** 2 August 2017
BEFORE: Employment Judge Holmes
Miss S Howarth
Ms J Beards

REPRESENTATION:

Claimant: Not represented and no attendance
Respondent: Mr P Warnes, Consultant

JUDGMENT

It is the unanimous judgment of the Tribunal that , the claimant having failed to attend the Tribunal to pursue her claims, her claims are struck out pursuant to Rule 47 of the 2013 Rules of Procedure.

REASONS

1. The Tribunal has convened this morning to hear the claimant's claims of sex and race discrimination, which have been listed for some considerable time, for three days. There has been considerable case management of these claims, and considerable correspondence between the claimant, who is unrepresented, and has been throughout in these claims, and the Tribunal, and the respondents dealing with many matters. The claimant however this morning has not attended or been represented, but by an email timed at 9.39 has written to the Tribunal in these terms

"Please note the Claimant will not attend the Hearing due to various reasons (ill health unresolved Case Management Orders, other matters) pending Employment Tribunal responses.

Respondent has been copied in the correspondence"

That is all the claimant has written, and she has not attended.

2. The respondents have attended and have been represented by Mr Warnes this morning. His application on behalf of the respondents is that the Tribunal dismiss

the claimant's claims. He invites the Tribunal to do so on two potential bases, one is, as it were, on the merits, that the Tribunal should effectively determine the claimant's claims, all of which, he submits, are cases where the burden of proof would be upon the claimant which she must automatically fail to discharge by reason of her absence before the Tribunal. Consequently he seeks a determination of the claims on that basis, or, alternatively pursuant to Rule 47 of the 2013 Rules which entitles a Tribunal to dismiss a claim if a party fails to attend or be represented at a hearing.

3. In terms of the former course, the basis upon which Mr Warnes advances that is that this would be at least a determination of the claims in which various allegations are made against a particular individual in the respondent's organisation, who is not, however, a named respondent but against whom allegations of sexual harassment have been made. Mr Warnes' application for a determination, as it were, on the merits is made with the purpose, in part, of vindicating that individual and removing any allegations of sexual harassment made against him. The alternative basis, of course, would not involve any such consideration, but would simply be under Rule 47. The preference is for the former course, but either way the respondent's application is that the claim be dismissed.

4. In terms of which approach to take, whilst appreciating the motivation and purpose of Mr Warnes' primary application, the Tribunal finds that somewhat unsatisfactory. If the Tribunal were to be invited to consider the matter to some extent on the merits, that would involve a consideration, at least on paper, of the evidence advanced that has been exchanged, and potentially before the Tribunal in written form, and then the determination on the merits on that basis, albeit that Mr Warnes' submissions are that even on the evidence as it stands the claimant would fall at the first hurdle, in terms of the burden of proof being upon her. But any such judgment would be likely to recite the allegations, and indeed the findings then made, even to dismiss them.

5. In terms of the position of the individual referred to, as observed, he is not a named respondent, and if the Tribunal were to determine the matter as Mr Warnes initially proposes it may be difficult to avoid doing so, because the Tribunal would have to recite at least the allegations, and its findings on that basis. So to that extent the consideration of the claims of the sort that is initially proposed would be difficult for the Tribunal to consider, without it at least considering the evidence, reading it and then making some findings, and indeed giving a judgment in which it explained why the claims were dismissed on the merits.

6. That rather reinforces the Tribunal's view that a more appropriate approach is to act under Rule 47, which is very clear that 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, effectively what Mr Warnes asked it to do. Before doing so, the rule provides that it shall consider any information which is available to it after making any enquiries that may be practicable about the reasons for the party's absence. In relation to the reasons for the party's absence, that party being the claimant, those reasons are set out in her email of this morning. They are quite clear, she mentions ill health, but does not specify anything in particular, and does not specify that any health condition is what is precluding her attending the Tribunal. No medical evidence is adduced, and she has not sought in this email any

postponement, but has simply baldly stated that she will not attend. In terms of “unresolved case management orders” as being one of the reasons for that, it is right that she has extant applications to amend, the most recent of which was dealt with by the Regional Employment Judge by letter of 27th July 2017, in which he directed that all case management issues, including her application to amend dated 6th July 2017, would be considered at the start of the hearing. So in terms of those issues, the claimant was informed that they remained live applications that could be dealt with, and would have been dealt with today.

7. For whatever reason, the claimant has declined to attend, and this is the only information she has given the Tribunal. The Tribunal does not consider in those circumstances that it needs to make any further enquiries about the reasons for her absence, she has given them to the Tribunal and in those circumstances, particularly in the light of the application by the respondents who have attended, and are prepared to deal with these claims as listed, the Tribunal sees no reason why it should not exercise its powers under Rule 47, and it does so to dismiss the claimant's claims pursuant to that rule.

Employment Judge Holmes

Dated: 3 August 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
23 August 2017

FOR THE TRIBUNAL OFFICE