



EMPLOYMENT TRIBUNALS

Claimant: Mr K Raza

Respondent:

Service House Ltd t/a Admiral Security Services

Heard at Leeds by CVP

On: 26 February 2024

Before

Employment Judge Davies

Appearances

For the Claimant:

Did not attend

For the Respondent:

Mr J England (counsel)

JUDGMENT

1. Pursuant to Tribunal Rule 47 the claims are dismissed.

REASONS

Procedural background

1. The Claimant is Mr K Raza. The Respondent is his former employer, Security House Ltd t/a Admiral Security Services. The Claimant worked for the Respondent as a security guard on a zero hours contract until he was dismissed with effect from 27 April 2023. He brings complains of direct race and disability discrimination. He ticked the box in the claim form to complain of unfair dismissal, but provided no details about that whatsoever. He had not worked for the Respondent for two years, so cannot bring an ordinary unfair dismissal claim. His claim form also said that he was complaining about "health and safety." That is not a claim he can bring in the Tribunal.
2. The Claimant did not attend the hearing today. The Respondent was represented by Mr J England (counsel).
3. The claim was initially presented on 15 September 2023. The Claimant provided particulars of claim drafted by solicitors. However, the Early Conciliation certificate number he provided in the claim form produced a certificate for a differently named Respondent from the one named in the claim form. The claim was rejected for that reason. The Claimant corrected the

certificate number on 22 September 2023 and the claim was accepted by Employment Judge Cox with effect from that date.

4. The claim was served on the Respondent and listed for a preliminary hearing for case management on 11 December 2023.
5. The Respondent presented its response on 10 November 2023. It asked for the preliminary hearing to be converted to a public hearing so that the Tribunal could consider its application for the claims to be struck out.
6. On 29 November 2023 the Claimant wrote a detailed and articulate letter explaining that he disagreed with the content of the response form. He provided a copy of his lengthy grievance, sent to the Respondent in July 2023, and he asked for the hearing to be postponed and the proceedings to be stayed. He provided a letter from his GP.
7. The GP wrote that the Claimant had a number of conditions, including depression and hidradentitis suppurativa. They said that the Claimant had significant stress and anxiety that was impacting him daily and making him extremely ill. He was struggling to sleep and concentrate and this had been made worse by his Tribunal proceedings. The GP said that the Claimant was too ill and would participate when he was medically fit to do so. If he were to participate, it would have a negative effect on him, so it was wise for the hearing to be postponed for 4 to 6 months. The GP said that if further information were required, they were happy to be contacted.
8. The Respondent objected to the Claimant's application. It pointed out that the information provided by the GP was general and broad. It did not say what the Claimant could or could not do. That was important in the context that the Claimant had written a detailed letter, because it suggested that he was well enough to correspond at least.
9. The Claimant sent a further response on 7 December 2023. He said that the Respondent was "nit-picking" and that if the Tribunal had any questions about the GP report it could write to him and he would ask his GP to answer. He said that he was not fit to participate at all in the proceedings.
10. On 7 December 2023 Employment Judge Lancaster refused the Claimant's application to postpone the hearing. He said that the GP letter did not provide sufficient information to delay this case management stage of the proceedings for a substantial period. The preliminary hearing would go ahead and the Tribunal could consider a stay or delay at the preliminary hearing.
11. In fact, early on 7 December 2023, before Employment Judge Lancaster's order was sent, the Claimant had written to the Respondent to say that he would not be attending the hearing.
12. Employment Judge Deeley conducted the preliminary hearing on 11 December 2023. She made clear and detailed case management orders. She set out in a clear and detailed table the complaints of direct race and disability discrimination that were included in the claim form. She identified points on which clarification was required. She noted that the Claimant had ticked boxes

in the claim form to say that he was also complaining of unfair dismissal and “breach of health and safety” but had not provided any information about such claims. She pointed out that if he wanted to pursue such claims he would need to make an application to amend his claim. She set out clearly what had happened in relation to the Early Conciliation certificate and explained that this meant that the claim had been presented outside the Tribunal time limit. In that context, she made careful case management orders, including:

- 11.1 The proceedings were stayed for one month, except for requiring the Claimant to request his medical records from his GP. The Judge stayed the proceedings because she had noted the medical evidence, but she required the Claimant to request his medical records because she noted that he was already corresponding with his GP.
 - 11.2 The Claimant was required to send his GP records to the Respondent by 15 January 2024 in relation to the conditions he relies on in his complaint of disability discrimination.
 - 11.3 The Claimant was required to send the Tribunal and the Respondent any application to amend his claim by 29 January 2024. The Judge gave clear and detailed guidance about what was required.
 - 11.4 The Claimant was required to send the Tribunal and the Respondent a statement by 19 February 2024 explaining why he did not present his Tribunal claim within the time limit.
13. Employment Judge Deeley listed today’s preliminary hearing in public. The matters to be decided included:
- 12.1 Whether the Claimant should be allowed to amend his claim.
 - 12.2 Whether the claims were presented within the Tribunal time limit.
 - 12.3 If not, whether the claims should be struck out because the Claimant has no reasonable prospect of succeeding in persuading the Tribunal that the time limit for presenting them should be extended on just and equitable grounds.
 - 12.4 Whether the claims should be struck out because they have no reasonable prospect of success.
14. Employment Judge Deeley expressly explained that if the Claimant needed to ask for a further stay or “pause” of any order, he would need to provide medical evidence about which of his medical conditions was causing him difficulty in pursuing his Tribunal claim and why; the date by which he thought he would be able to participate and why; and whether his medical condition would cause him difficulty in attending hearings only, or dealing with correspondence too.
15. The Claimant emailed the Tribunal on 14 December 2023 asking for the outcome of the preliminary hearing. Employment Judge Deeley’s orders were sent to the parties on 15 December 2023.
16. The Claimant did not comply with Employment Judge Deeley’s order about medical evidence relating to his disability. He did not make any amendment application and he did not provide any witness statement setting out why his claim was not presented within the time limit.

17. On 8 February 2024 the Claimant emailed the Tribunal requesting a postponement of today's hearing. He relied on the GP letter he had sent with his previous postponement application and a fit note signing him off work from 16 January 2024 to 15 February 2024 because of a fall and back and leg pain. He did not provide any of the information Employment Judge Deeley had told him was required. He said that was "too ill" to chase his GP and would not be doing it. Also, he had recently had a bad fall and was mostly bedbound with restricted movement.
18. On 12 February 2024 the Respondent objected to the Claimant's postponement application. It pointed out that he had not provided the information required by Employment Judge Deeley and was relying on medical evidence that had already been found to be inadequate.
19. On 16 February 2024 Employment Judge Brain refused the Claimant's postponement application. He said that he could renew the application but must provide the information identified by Employment Judge Deeley when he did so.
20. On 19 February 2024 the Claimant sent a further email to the Tribunal asking for the hearing to be postponed. He said that he was suffering too much stress and anxiety and also that he had had an accident on 16 January 2024 and had hurt his back and leg badly. The Claimant said that he had not been able to ask his GP to provide more evidence because he was "too unwell." He said that he had planned to attend today's hearing until his accident on 16 January 2024. He could not ask his GP for evidence about why he was unable to attend because his focus was to get his health better. He provided a copy of a letter he had written to his GP surgery on 16 February 2024, together with a fit note dated 15 February 2024, covering the period 15 February 2024 to 14 April 2024. That simply signed him off work. The reason given was a fall and back and leg pain.
21. The Claimant's letter to his GP was long, detailed and articulate. It set out a detailed complaint about delays by the GP in dealing with him in relation to his fall on 16 January 2024. It made clear that the Claimant had seen his GP in person at the surgery on 22 January 2024. He had repeatedly chased his GP surgery in relation to the follow-up from that appointment. He had a telephone appointment with his GP on 15 February 2024. The letter also refers to the Claimant's wife being a lawyer. The Claimant sent a copy of the grievance he had sent the Respondent to his GP surgery with his letter of complaint.
22. Employment Judge Ayre refused the Claimant's postponement application on 21 February 2024. She pointed out that he had not complied with Employment Judge Deeley's orders, another copy of which was provided.
23. On 22 February 2024 the Claimant emailed the Tribunal to say that he had "shouted and screamed" that he was not fit to attend and would not be attending because his "condition" did not allow him to. He said that his anxiety was too much and that he had had an accident and also had an ear infection. He said that he was not applying for a postponement any more and would engage when his GP found him fit. He provided copies of letters referring him for an MRI scan and an oral/maxillofacial appointment.

24. The Respondent applied the same day for today's hearing to be converted to a CVP (online video) hearing, to help the Claimant in view of his mobility issues. The Tribunal did so. Employment Judge Ayre also said that the Claimant could renew his postponement application at the start of the hearing if he wished.
25. The Claimant emailed on 23 February 2024 to say that he had been involved in a road traffic accident the previous day, which made him more unwell and unable to participate in the proceedings.
26. The Claimant did not attend the hearing.

Legal principles and decision

27. Under rule 47 of the Employment Tribunal Rules of Procedure 2013, where a party fails to attend or be represented at a hearing, the Tribunal may dismiss the claim or proceed in the absence of the party. Before doing so, it shall consider any information that is available to it, after any enquiries that may be practicable, about the reasons for the party's absence. Under Tribunal Rule 2, the Tribunal must seek to give effect to the overriding objective, to deal with cases fairly and justly.
28. I concluded that it was necessary in accordance with the overriding objective to dismiss the Claimant's claims under rule 47 in view of his failure to attend the hearing today. This is the second occasion on which he has failed to attend following the Tribunal's refusal of his request for postponements. It is now almost five months since his claim was presented and the Respondent and the Tribunal have been put to the time and expense of two preliminary hearings but have not been able to progress these claims any further. I considered all of the information available to me about the Claimant's reasons for not attending and concluded that there was not a satisfactory explanation and that the overriding objective and the interests of justice now required the claims to be dismissed. I noted in particular:
 - 29.1 The initial letter from the Claimant's GP was very general and broad. It did not provide the information necessary to decide whether the hearing should be postponed or the claim stayed. The Claimant was told that.
 - 29.2 Employment Judge Deeley told the Claimant very clearly what medical information he would need to provide if he wanted to apply for a further stay or "pause" in an order.
 - 29.3 That is consistent with the Employment Tribunals' Presidential Guidance on seeking a postponement of a hearing.
 - 29.4 The Claimant offered to pass on any further questions to his GP in his email of 7 December 2024. He was clearly willing and able at that stage to obtain necessary medical information from the GP.
 - 29.5 Despite Employment Judge Deeley's clear explanation, when the Claimant applied for a postponement on 8 February 2024, he did not provide appropriate medical evidence explaining which condition affected him and why; when he would be fit to attend a hearing and why; and whether he was only prevented from attending hearings or whether he was unable to correspond too. The fit note he sent expired eleven days before the preliminary hearing date.

- 29.6 The Claimant's explanation on 8 February 2024 for not providing appropriate medical evidence was that he was "too ill" to chase his GP. However, it is clear from the 16 February 2024 letter to his GP, of which he provided a copy with his further postponement application on 19 February 2024, that far from being "too ill" to obtain evidence from his GP, the Claimant had seen him in person at the surgery on 16 January 2024, repeatedly chased the surgery after that, had a telephone appointment on 15 February 2024, and sent a two-page, detailed and articulate letter to the GP on 16 February 2024. He even provided the GP with a copy of his grievance letter. It is clear that he was not "too ill" to engage with his GP to seek medical evidence in support of an application for a postponement or stay. He had numerous opportunities to do so, had he chosen to.
- 29.7 The Claimant said in his 19 February 2024 letter that he had planned to attend the hearing today, until he fell on 16 January 2024. The reason for his postponement application at that stage was therefore seemingly the pain and mobility issues caused by his fall. A sick note signing him off work because of those issues does not assist the Tribunal in understanding whether or not the Claimant is fit to attend a Tribunal hearing, or to comply with Tribunal orders, because of them.
- 29.8 On 22 February 2024 the Claimant identified a further reason for not attending the hearing – an ear infection – but he provided no medical evidence about that. He said that he had "shouted and screamed" that he was not fit to attend. He may feel that, but the Tribunal does not make its decisions based on what a litigant asserts, no matter how loudly or forcefully. It makes its decisions based on evidence, in this case medical evidence. What the Claimant has **not** done is comply with clear Tribunal orders requiring him to provide adequate medical evidence in support of his postponement applications.
- 29.9 The Tribunal converted the hearing to a CVP hearing so that the Claimant could attend despite his mobility issues.
- 29.10 I note the references at various stages to the Claimant's stress and anxiety. However, I also note that this has not prevented him, throughout the period since presenting his claim, from engaging with the Tribunal in writing by email. He has evidently engaged with his GP in the same way as well as attending two appointments and making phone calls. I am simply not satisfied that his stress and anxiety has prevented him from obtaining appropriate medical evidence.
- 29.11 Despite telling the Tribunal that he was "mostly bedbound" the Claimant was evidently out of the house on 22 February 2024, because he said that he had been involved in a road traffic accident. He did not provide any detail or information about that either.
- 30 If they had not been dismissed pursuant to Tribunal Rule 47, I would have struck the claims out because:
- 30.1 The complaint of unfair dismissal has no reasonable prospect of success. The Claimant has done nothing more than tick a box. He did not work for the Respondent for two years. His legally drafted particulars of claim did not identify any basis for complaining that his dismissal was automatically unfair such that the two-year qualifying

period did not apply. The Claimant has not made any application to amend his claim in relation to the unfair dismissal complaint, despite Employment Judge Deeley's orders.

30.2 The complaint of "breach of health and safety" has no reasonable prospect of success. The Tribunal does not have jurisdiction to deal with a complaint of "breach of health and safety."

30.3 The discrimination complaints all relate to events on or before 27 April 2023. In accordance with Tribunal Rule 13(4), they are deemed to have been presented on 22 September 2023. Having regard to the early conciliation dates, that means they were not presented within the time limit in the Equality Act 2010. The Claimant has no reasonable prospect of persuading the Tribunal that it is just and equitable to extend the time limit for presenting the claim. He failed to provide a witness statement setting for today's hearing setting out his explanation, despite being ordered to do so.

**Employment Judge Davies
26 February 2024**

Sent to the parties on:

For the Tribunal Office: