



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ndumbe

Respondent: Greater Manchester Mental Health NHS Foundation Trust

Heard at: Manchester

On: 23 July 2018

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: Not in attendance

Respondent: Miss Attwal, Solicitor

JUDGMENT

It is the judgment of the Tribunal that the claimant's claims are dismissed pursuant to rule 47 of the 2013 Rules of Procedure.

REASONS

1. The Tribunal convened to conduct a preliminary hearing in relation to the claimant's claims of unfair dismissal, disability discrimination and for arrears of pay. This preliminary hearing was convened by letter from the Tribunal to the parties of 30 May 2018, when the hearing was listed for 11.30am. The length of hearing was subsequently increased from an hour to 1½ hours, but the start time of 11.30am was unchanged.

2. On 23 July 2018, the Tribunal called the case on at 11.45am, when Miss Attwal, solicitor for the respondent attended, but the claimant did not attend, nor was he represented before the Tribunal.

3. The Employment Judge accordingly enquired of Miss Attwal as to whether she had received any communication from the claimant. Miss Attwal had prepared an agenda for use in the preliminary hearing, which had been sent to the claimant by

email on 20 July 2018. Miss Attwal confirmed that she had had no communication from the claimant, and indeed had not heard from him since the institution of the proceedings.

4. The Employment Judge noted that the Tribunal had also written to the claimant on 30 May 2018 under a separate letter, pointing out that in respect of his complaint of unfair dismissal, he did not have two years' completed service with the respondent, and consequently it appeared that the Tribunal would not be able to hear his complaint of unfair dismissal. The Tribunal informed the claimant that it was therefore proposing to strike out the unfair dismissal claim unless the claimant gave reasons in writing as to why it should not be struck out. The date for those reasons to be provided was 13 June 2018. The Tribunal received no response to that letter.

5. In these circumstances, Miss Attwal invited the Tribunal to exercise its powers under rule 47, which provides that if a party fails to attend or be represented at a hearing (and that includes , now under the 2013 Rules, a preliminary hearing), the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. The rule goes on to provide that before doing so it shall consider such information as is available to it after any enquiries that may be practicable about the reasons for the party's absence.

6. The Employment Judge considered this application. Having noted the claimant's failure to respond to the Tribunal's strike out warning of 30 May 2018, and to engage with the respondent in relation to any communications relating to the agenda, the Employment Judge considered that the claimant had failed to attend the hearing without any good reason, or any explanation . Further, in any event there are considerable issues in relation to the claims that the claimant is seeking to make. In relation to the unfair dismissal it does appear that he lacks the qualifying service and it seems inevitable that his complaint of unfair dismissal will have to be struck out in any event. In relation to his disability discrimination claims, as the respondent has already indicated in the response, the claimant has yet to identify any particular disability he relies upon , or to provide adequate particulars of his claims. That would have been one of the matters that could have been attended to had the claimant attended this hearing, when the necessary information could perhaps have been elicited in this hearing, which is part of its purpose.

7. In these circumstances the Employment Judge has considerable reservations as to whether the claimant seriously intends to pursue these claims. Given the absence of any explanation for his absence and the failure on his part to respond to the Tribunal's letter of 30 May 2018, the Employment Judge considers that on the information currently available to him it is indeed appropriate to dismiss the claimant's claims.

8. The claimant will of course be entitled, if he so wishes, to seek a reconsideration of this Judgment. If he does make any such application, for which there are time limits which will be apparent from the documentation accompanying this Judgment, he must , as part of that application, explain why he has failed to attend, or be represented or in any other way participate in this hearing listed for today, and further why he has failed to respond to the Tribunal's letter of 30 May 2018. If the claimant is to seek reconsideration, and to be allowed to proceed with

his claims, it will also be necessary for him to provide much more detail of the claims he is making. That, however, can be considered when and if the claimant makes any application for reconsideration, but for the present his claims stand dismissed by the Tribunal for the reasons given.

Employment Judge Holmes

Dated : 24 July 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
25 July 2018

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