



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L McKenna

**Respondent:** Lookers (Plc) Mercedes

**Heard at:** Ashford Employment Tribunal

**On:** 24 February 2020

**Before:** Employment Judge Martin  
Mr Phillips  
Ms Clarke

## Representation

**Claimant:** Did not attend

**Respondent:** Mr Hurd - Counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims are dismissed.

# REASONS

1. This hearing was listed for a six-day full merits hearing. At 15:56 on Sunday 23 February 2020, the day before this hearing, the claimant's solicitor sent an email to the respondent and to the tribunal explaining that he would be unable to attend the tribunal hearing. The reasons given in this letter can be summarised as:
  - a. The claimant not having "appropriate legal representation" for the hearing in that a charity which was supporting his claim would not stretch to a barrister for the proceedings. The letter suggests that Mr Salter, the claimant's solicitor was available but that the claimant did not feel mentally strong enough and did not have the financial means to continue.
  - b. That several attempts had been made for an out-of-court settlement "even within the last 24 hours" which were declined by the respondent. Mr Salter makes clear in his letter that he advised the claimant that if he did not attend the trial there was a strong possibility that he would "forfeit his position". It was stated that the claimant fully understood his position.

- c. That the Claimant's mental health issues and financial problems were the reason he could not attend and he was not mentally strong enough to proceed with the hearing.
  - d. An application was made to postpone the hearing for a date beyond six months from the date of this hearing. The claimant it was said, had very recently started a new job which was still in its probationary period.
2. The tribunal heard submissions from the respondent who opposed the application for postponement and invited the tribunal to strike the claimant's claim out. In submissions, the respondent explained that there had been no indication in any correspondence with the claimants before the email on the Sunday before this hearing that he would not be attending and it was put forward that this was a deliberate attempt to cause as much disruption to the respondent and to the tribunal.
3. The tribunal was asked to consider the application and context in that in May 2019, this matter was due to be heard but was adjourned because of lack of judicial resource. At that hearing, the claimant attended, and Mr Salter attended as the claimant's sole representative to represent him at the hearing. It was submitted that there was no suggestion at that time that Mr Salter's representation was in any way inadequate.
4. It was further submitted that the incidents go back to December 2016 and January 2017 which involve a vital determination of facts. These facts sent around conversations between the claimant and people from the respondent some of which is corroborated by emails sent by the respondent but there was no notes or minutes of these conversations. The tribunal acknowledged that it would be unlikely that a six-day hearing could be accommodated in 2020.
5. It was suggested that the claimant's application was strange and disingenuous in that it suggests he has mental health issues but there was no medical evidence provided. If he had ongoing mental health issues, it was submitted that the claimant would have put this to the tribunal weeks ago and that the health condition would have continued for some while and it was not a case of something unexpected happening over the weekend. It was submitted that the real reason the claimant did not attend was because he had started a new job and was in his probationary period.
6. The tribunal considered the emails sent by Mr Salter on behalf of the claimant and the submissions made by the respondent. The tribunal dismissed the claimant's claims and several matters were considered and formed part of the decision.
7. First the application was made very late in the day which was unreasonable. The tribunal infers from the letter, that the claimant was holding out for as long as possible hoping that the respondent would make some offer of settlement. When it did not the claimant was left with no alternative but to withdraw his claim.
8. The tribunal has considered the provisions of the overriding objective and prejudice to the respondent if the hearing was to be postponed and heard later. As submitted, key factual disputes are around conversations between the claimant and individuals at the respondent and inevitably, the passage of time would make it more difficult for the respondent witnesses to recall what had been said in enough detail.
9. The tribunal also must consider dealing with matters with a view to saving expense

both for the parties and the public purse. The tribunal had been convened to sit for six days and other cases were put off accommodating this hearing. The respondent attended the tribunal with 12 witnesses who had come from across the country to give evidence.

10. The tribunal accepted the submission that there was no problem with the legal representation of Mr Salter and in any event, the tribunal is well used to conducting hearings where the claimant is representing themselves and does not think that the claimant would be unduly disadvantaged given that the case had been well prepared with clear witness statements and bundles of documents.
11. The tribunal is satisfied that the claimant had received appropriate advice that if he did not attend then there was a strong likelihood that his claim would be dismissed. Notwithstanding this he chose not to attend.
12. In all the circumstances the claimant's claims are dismissed. Respondents reserve the right to make an application for costs and should such application be made it will be considered by the tribunal.

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Employment Judge Martin

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Date: 24 February 2020