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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108017/2020

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Hearing Held at Glasgow Tribunals Centre on 20 September 2021

Employment Judge J Young

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Richard Russell

**Claimant
Not present and
not represented**

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Gibsons Direct Ltd

**Respondents
Represented by
Mr K Gibson,
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the claim is dismissed under Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 by reason of the claimant's failure to appear at the Preliminary Hearing of 20 and 21 September 2021.

REASONS

1. In this case the claimant presented a claim to the Employment Tribunal on 28 December 2020 claiming that he had been unfairly dismissed and discriminated against on the grounds of disability and religion or belief. He also made a claim for “other payments” which claim appeared to relate to carrying out body repairs to damaged vehicles.
2. These claims were resisted by the respondent. In their ET3 response they advised that the claimant had only been employed in the period between 9 September 2020 – 6 November 2020 and that the reason for termination of the employment was because of ongoing issues that the claimant had with Disclosure Scotland. He sought to challenge the legitimacy of a conviction and did not accept the Disclosure Scotland certificate which was a necessary requirement for him to continue driving school buses. They denied that there were any sums due to the claimant. At termination they had a belief that they were entitled to withhold wages in respect of damage to a vehicle but subsequently made full payment of all wages due. It was denied that there was any agreement that there would be any payment made to the claimant for body repairs to vehicles.
3. The case has a lengthy procedural history and the ensuing correspondence and communication has been considerable. It is considered necessary and useful to give a reasonably full outline of events.

Preliminary hearing of 4 March 2021

4. On 4 March 2021 a Preliminary Hearing for case management purposes was held via Telephone Conference Call. The claimant attended that discussion. The respondent was also represented. At that time Orders were made being that:-
5. A Preliminary Hearing be held to determine:-

(a) *Whether the claimant has a qualifying disability under Section 6 of EA*

(b) *Whether the claimant has presented a claim of discrimination because of a philosophical belief in his ET1.*

(c) *Whether the claimant has a philosophical belief that is protected under the EA.*

5 It was ordered that a Date Listing letter be sent to parties to identify suitable dates for a hearing on those issues.

6. It was also ordered that the claimant should lodge within 28 days of the hearing further and better particulars in respect of the following:

(a) *The disability(ies) that he claims to have;*

10 (b) *The impact the disability(ies) have upon his day to day activities;*

(c) *The philosophical beliefs he claims to have that are protected under the EA*

15 (d) *when, where, by whom and in what circumstances he has been discriminated against because of his disability and/or philosophical belief;*

(e) *what unlawful deductions he claims have been made by the respondent, what the legal basis for the sums claimed were and how he has calculated the sums claimed due.*

20 (f) *It was also ordered that within 28 days the claimant shall send to the respondent medical reports and medical records in support of his claim that he has a qualifying disability under the EA.*

7. Other orders were made regarding the exchange of documents and the preparation of a file of documents for use at the intended preliminary hearing. As the claimant did not have the technology to facilitate participation in a remote hearing it was advised by that an "in person" hearing would be listed.
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8. Considerable correspondence then ensued. In an email of 9 April 2020 the claimant advised that he had not received the Note and Orders following the preliminary hearing held on 4 March 2021 and sought an order that the respondents *“immediately”* desist harassing defaming and abusing him by continuing to state that he was liable for damage to any of the respondent vehicles. He also asked the Tribunal to note that the respondent possessed *“illegal and unlawful weapons on his premises such as machetes and guns”* and these matters had been reported to the Traffic Commissioner, the media and Renfrewshire Council as well as the Police. He copied the Lord Advocate and First Minister into this correspondence. He wondered how long the respondents would keep their *“public transport contracts in light of those concerning facts”* and surmised that this *“public authority”* (presumably the Tribunal) would be obliged to inform the appropriate authorities that the respondent was *“harbouring unlawful firearms and machetes and other offensive weapons...”*.
9. The Tribunal copied the note of the Preliminary Hearing to the claimant and advised that any correspondence which was sent to the Tribunal required to be copied to other parties in terms of Rule 92 of the Rules of Procedure. The Tribunal advised that they could make no order for interdict if that was being sought restraining the respondent from any conduct and that he may wish to seek legal advice on this matter. In relation to allegations of criminal conduct such matters should be reported to the Police.
10. As regards the Order to supply information on his disability and medical records the claimant indicated he relied on information from the benefit agencies and appointment letter and a prescription which he stated should be accepted as confirmation of disability.
11. By letter of 20 April 2021 the Tribunal the claimant was advised that the Preliminary Hearing to take place would *“decide whether or not you have provided sufficient evidence to the establish that you are a disabled person and that the Employment Tribunal could not give any indication regarding the sufficiency of evidence in advance”*. The claimant was advised that he might

wish to take *“legal advice on this which the Employment Tribunal cannot offer.”* It also stated that the *“material does not appear to be what was envisaged; medical reports from your G.P or treating consultant confirming diagnosis, treatment, the effective medication, prognosis and the duration or likely duration of the condition. Confirmation of appointments or of medication taken is not the same thing. Put simply E J Strain’s Order was for “medical reports and medical records” which these are not”*.

12. In response the claimant advised that the Tribunal should contact his GP for the information required.
- 10 13. The claimant was reminded on 28 April 2021 that the Employment Tribunal required to remain neutral and could not get involved in helping either side to gather evidence necessary to prove their case and that direct contact between a Judge and witness would be extremely inappropriate. He was reminded that the responsibility for gathering suitable medical evidence remains his and that as previously suggested *“you might wish to take legal advice if you are unsure what to do”* . It was suggested that liaising with the respondent might help to identify some neutral questions which he might put to his G.P.
14. The claimant continued to insist that the Tribunal be in direct contact with his GP and saw *“no difficulty in the Court asking my G.P to confirm disability”*. In any event he advised that the matter could be quickly resolved in the event that the respondent simply concedes *“that what he already knows in relation to my disabilities”* and that they should *“start telling the truth and immediately desist in knowingly misleading the courts, which I am reserving my position to ask for a contempt of court matter to be considered”*. He also advised the *“respondent is not seeing any of my medical records”* He then advised the Tribunal that he was *“encountering significant difficulties in obtaining the confirmation of my disabilities for my G.P “ and that he had “ made a GDPR request”*. Further he alleged that he was encountering difficulties in obtaining the required medical evidence *“owing to the United Kingdom government and we believe its security services and other agencies unlawfully interfering with my medical records which are incomplete”*. He stated that he had made an

application “ *in the European Court of Human Rights*”, seeking an interim “*Rule 39 interim protection measures order owing to ongoing Human Rights violations and abuses presently executed against me by the United Kingdom and its public authorities*” . He again requested that the evidence from DWP having him registered as disabled and in receipt of PIP be sufficient to establish disability.

15. A Notice of Preliminary Hearing was sent to the parties on 22 May 2021 which advised that the hearing would take place on 20 and 21 July 2021. It was clarified that hearing would be “in person”.

16. The claimant had made an application for adjournment of the proposed hearing in an email of 22 May 2021. That was refused by the Tribunal on 24 May 2021. which advised that “*a very generous period was allowed (and still remains) in which to obtain the necessary medical evidence*” and the claimant was again advised that it was the claimant’s responsibility and not that of the Tribunal to obtain the necessary evidence. It was noted that the claimant “*seems to suggest that either his G.P was deliberately failing to provide the required material or that the UK Secret Services are engaged in suppressing it*”. The claimant was advised that the Tribunal could not make any orders for disclosure of documents against the G.P surgery unless and until cogent evidence of the alleged deliberate withholding of documents was provided.

17. By return email of 24 May 2021 the claimant responded saying that he had “*no difficulty providing evidence to you and that I am in the process of speaking to the GP practice and NHS in order to get accurate medical information either from my GP or the consultant psychiatrist*” He reiterated that accurate medical information was not being provided “*probably owing to National Security and other legal reasons*”. He advised that his “*application to Strasbourg was being processed independently*” and was not the reason for seeking an adjournment.. He stated that the respondent was employing Counsel and that he was unrepresented and “*objectively I could not be criticised for asking the Tribunal to order representation of my choosing, which would be in line with Article 6 of the Convention to which the state*

remains a high contracting party. Perhaps the respondents will concede this case. In any event I know that the respondent is taking advantage even during these proceedings owing to my state difficulties which are significant, abusing and continuing". He made other comment regarding the respondent's position and invited them to concede the "disability discrimination points and philosophical belief points and immediately desist from knowingly misleading the court and wasting court time...". He advised that copies of emails sent to his G.P are "legally privileged correspondence which I trust the court will understand I would like to keep private without the state knowing what these broader framed emails were addressing".

18. Further e mail communication took place between Tribunal and claimant without any change being made to the date of and matters to be canvassed at the Preliminary Hearing of 20 and 21 July 2021. A further Notice of Preliminary Hearing was sent to the parties on 17 June 2021 confirming the date of that hearing as 20/21 July 2021 and that it was to determine:-

18.1 Whether the claimant has a qualifying disability under Section 6 of the Equality Act 2010 (EA2010);

18.2 Whether the claimant has presented a claim of discrimination because of a philosophical belief in his ET1.

18.3 Whether the claimant has a philosophical belief that is protected under the EA 2010.

19. Further exchanges then took place with the claimant again advising that he had asked his GP practice to confirm his disabilities and still awaited medical evidence. He asked again if the respondent would be prepared to accept evidence of PIP and conclude from that, that he suffered from disabilities. He was advised on 21 June 2021 that disability remained a disputed issue.

20. On 28 June 2021 the respondent made an application for “strike out” of the claimant’s claim to be considered at the Preliminary Hearing of 20/21 July 2021 under Rule 37 (1)(b) of the Tribunal Rules of Procedure 2013 namely *“that the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable or vexatious”*. They outlined the reasons for that application. They relied amongst other things on the various allegations set out previously.
21. There then ensued further email exchanges in which the claimant made further allegations against the respondent. By email of 12 July 2021 the claimant advised that he wished the exact date and time of any hearing and as he did not have any medical evidence from his GP thought that it would *“only be fair to adjourn the proposed preliminary hearing until the proper medical evidence has been issued to me by my G.P”*. The application for a postponement was objected to by the respondents on 13 July 2021 as it was considered no good cause for postponement had been articulated. On 14 July the claimant advised that he had expected a call back from the Tribunal that day with confirmation that the hearing was to be postponed. He had also requested a full panel to consider matters at the preliminary hearing.
22. By email of 16 July 2021 the Tribunal advised that the application for a full panel was refused as it was made far too late. There had been many opportunities to make the request earlier and granting it now would put the respondent to additional expense in providing further bundles of documents. Further the claimant had not explained why in a departure from the default position under the ET rules a full panel was necessary. It was also stated that the hearing of 20/21 July 2021 would go ahead to decide *“the respondent’s application to strike out the claim on the basis that the claimant has conducted proceedings unreasonably and/or vexatiously. If the claim is not struck out the Employment Judge will then consider the claimant’s application to postpone the preliminary hearing. If the postponement is not granted then the ET will decide on the available evidence whether the claimant was a disabled person. In that respect the claimant was required to provide documentary evidence showing (a) the date on which he first requested medical records from his GP*

(b) any response from the practice (c) all subsequent communications with the practice relating to disclosure of medical records (d) any response from the practice”

Preliminary hearing of 20/21 July 2021

5 23. On 20 July 2021 Mr K Gibson attended the Preliminary Hearing for the
respondent. The claimant contacted the Employment Tribunal office shortly
before the hearing was due to commence advising that he was suffering from
suspected Covid-19 symptoms and was unable to attend. It was requested
that given the history of the matter including that the claimant had previously
10 asked for a postponement of the Preliminary hearing that the claimant provide
some proof he was investigating his suspected Covid symptoms. It was also
asked that the hearing date of 21 July 2021 be retained in the event that the
claimant was able to attend in person or virtually by way of CVP. He also
asked that the application for strike out might be conducted by telephone on
15 21 July. Lastly, he indicated that in the event the claimant was unable to attend
he would make an application that an “Unless Order” was granted requiring
the claimant to produce the information confirming the contact he had made
with his GP which it was submitted was ordered on 16 July 2021 as well as
the further and better particulars of claim ordered at the Preliminary Hearing
20 on 4 March 2021. The hearing date of 20 July 2021 was discharged on the
basis that the claimant had advised on the morning that he was suffering from
suspected Covid symptoms.

24. In a letter to the claimant of 20 July 2021 (emailed to him) he was asked to
provide evidence (for example his request for a Covid test) to support his
25 position that he was suffering from symptoms and should do that within seven
days. It was advised that the hearing date of 21 July had not yet been
discharged and the claimant asked to confirm by return whether he would be
able attend on that date in person. It was noted that the claimant had earlier
indicated he did not have the necessary equipment for a remote hearing but
30 if that had changed and the claimant had the means to do so he should advise

whether he was able to take part in a hearing on 21 July by remote means. The claimant was asked to respond by 3 pm on 20 July 2021.

25. The claimant responded at 16:04 hours on 20 July 2021 and in that email provided documentation in support of his award of benefits. He asked again that the documentation which provided information about benefits was accepted as evidence of disability He also made a number of allegations about his treatment at the hands of the respondent. He also confirmed that his request for evidence from his GP was last made by telephone and was recorded by the GP practice a few days previously. He advised that he was given information by the practice secretary that his GP was still processing his request which was taking some time due to his extraordinary circumstance. He did not indicate whether he was able to attend a hearing on 21 July 2021 by any means or produce any information in relation to steps taken to investigate suspected Covid symptoms.
26. Mr Gibson again appeared on 21 July 2021. He sought dismissal of the case under Rule 47 of the Tribunal Rules of Procedure but that was not granted on the basis that while the claimant had not provided further information about evidence of Covid symptoms or answer all the questions asked of him that did not exclude the possibility that the reason for his non-attendance on 21 July 2021 was that he was suffering from such symptoms. The application for an “Unless Order” was also not granted except to advise the claimant of the effect of an such an Order relative to the information to be supplied in terms of the Orders issued following the preliminary hearing of 4 March 2021. The claimant was to advise within seven days whether he had any objection to such an Order being granted. To maintain progress a further preliminary hearing was fixed for 20/21 September 2021. All these matters were contained within a Note of the Preliminary Hearing of 20/21 July issued to parties on 23 July 2021.
27. On 27 July 2021 the claimant advised by email that he wished a “paper copy” of the note of preliminary hearing and that the “*public authority is asking me to provide evidence that I do not control or possess at the moment*” as regards

the information on Covid. The claimant was sent a copy of the Note of preliminary hearing which contained the dates for the adjourned hearing of 20/21 September 2021. He was also advised that the relevant guidance on Covid was that if an individual had Covid symptoms they should arrange a Covid Test and *“if it is your position that you could not attend the hearing because of suspected Covid symptoms can you provide some evidence of having arranged to take Covid test, for example email correspondence”*. He was asked to respond by 4 August 2021. The claimant indicated that he had ordered a test but there was no email correspondence and he *“was simply given a testing kit on Thursday from my chemist on behalf of the NHS”*. He also found it *“insensitive, inappropriate and disproportionately intrusive”* that this question was being asked and that the request for such medical information is *“confidential and I believe should be respected”*.

28. In a further email of 27 July 2021 the claimant made the first request for *“this public authority or any agency of Her Majesty’s Government to arrange an independent solicitor and advocate for me in order to protect my legal interest and to ensure an equal and level playing field ”*. He also continued to make allegations regarding the respondent’s behaviour towards him and believed that it was in *“the interests of justice”* that *“independent representation of my choosing is given to me to protect my “rights”*

29. In relation to these matters the Tribunal wrote to the claimant on 30 July 2021 advising that the correspondence had been referred to the Employment Judge who had been present at the now discharged hearing of 20/21 July 2021 and the claimant advised :-

“ The Employment Judge had directed that information was provided in support of the reason for your inability to attend the preliminary hearing in July. That is not a direction to produce information which may be confidential about your health, but about the steps you had taken to investigate your suspected Covid symptoms.

With regard to your email of 27 July the Tribunal is an independent legal body. it is not the function of the Tribunal to arrange legal representation of

the parties appearing before it. The claimant may wish to consider approaching the CAB, a solicitor or some other body which could provide him with legal advice but he is not obliged to do so, and he can continue to represent himself.

5 *The claimant has already been advised that it is not possible for the Tribunal to confirm it accepts his disability status on the basis of correspondence or information submitted by the claimant. Disability status is a disputed matter between the parties, and either the respondents will have to concede it or the Tribunal conduct a hearing on that matter at which evidence can be heard*
10 *before the matter can be resolved.*

If the claimant has any concerns about the health and safety of the Tribunal premises, these should be addressed to the Tribunal administration.

The respondent is asked to comment on the emails of 29/07/2021 by 06/08/2021”.

15 30. *By email of 30 July 2021 the claimant again accused the respondent of criminal conduct and that as regards Covid “the steps that I followed were the government guidelines and I do not know what else I can do/say other than there are busy healthcare professionals and other witnesses that can speak to the truth of these facts. I feel that I am being subjected to unacceptable*
20 *Gaslighting techniques aka psychological abuse tactics that are designed to degrade me , break me and wear me down and make me feel inferior and suffer feelings of fear and intimidation, contrary to Article 3 of my Convention rights. This public authority should be reminded that I am a disabled person and I am presently not represented also by a legal representative of my own*
25 *choosing”.*

31. On 30 July 2021 Notices of Preliminary Hearing in person were issued to the claimant and respondent advising that the preliminary hearing would take place on 20 and 21 September 2021 at 10:00 am. It was indicated that at the preliminary hearing the tribunal would determine the following preliminary issues:-

(a) *The respondent's application for a strike out of the claim on the grounds of the claimant's unreasonable and vexatious conduct.*

(b) *In the event the claim is not struck out whether the claimant has a qualifying disability under Section 6 of the Equality Act 2010 (EA 2010)*

10 (c) *Whether the claimant has presented a claim of discrimination because of a philosophical belief in his ET1.*

(d) *Whether the claimant has a philosophical belief that is protected under the EA 2010.*

15 40. Directions were also made regarding the submissions of any documents prior to the hearing.

41. There was also sent to the claimant on 30 July 2021 a notice of a Preliminary Hearing to take place on 7 September 2021 to discuss the arrangements for the forthcoming hearing starting on 20 September 2021. Matters to be discussed at that preliminary hearing were the steps taken by the Tribunal to ensure the safety of those attending; social distancing measures in place and how these may impact on a number of people who can attend; how the parties can assist the Tribunal to manage the flow of people attending; any steps that need to be taken to ensure that the case is ready for the hearing.

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25 42. In the course of correspondence the claimant had provided some photographs of information that he maintained was relevant to his disability status. He also advised that he had received "*the directions*" but was concerned that "*defamatory, degrading and inhuman treatment of my character, honour and reputation appears to be being attacked and*

discriminated against. I am politely and kindly requesting that these unwarranted, unkind and baseless and dehumanising attacks against me immediately stop. This is in line with my philosophical beliefs”.

43. By email of 5 August 2021 the claimant again asked that the respondent
5 concede he was a disabled person in light of his DWP information and that he
suffered from *“anxiety and PTSD and other invisible disabilities”*. By further
emails of 6 August 2021 the claimant sent photographs of what he indicated
was *“medical evidence”*. He advised that certain redactions had been made
“to show only the relevant information” and because they he did not wish the
10 respondents to have sight of his medical records he felt that *“the best thing to
do”* is that the *“Tribunal asks my GP ... to attend my next hearing by
telephone to confirm my disabilities, which are medically complex I
understand”*. He stated that he still had his Covid 19 test *“which I can produce
at the next hearing if required by this public authority”* and that *“other
15 members of my family tested positive in or around 20 or 21 September 2021
which caused us all much worry and anxiety”*. He stated *“in the circumstances
Ms Doherty, Mr Whitcombe, I believe that it is in my legal interests to get a
solicitor involved who will suggest also, that a Senior Advocate is instructed
to protect my legal interests”* and *“I inform this Court that I require a lawyer to
20 instruct an Advocate too - because I believe that I am being subjected to
unfairness and further abuse by the respondent”*.

44. The respondent was asked to comment on the medical information provided.

45. By email of 6 August 2021 the respondent set out their position in relation to
the abandoned preliminary hearing of 20/21 July 2021. The respondent
25 repeated its application for “unless orders” so that the claimant complied with
the orders of E J Strain at the preliminary hearing of 4 March 2021 and also
that the claimant provide evidence to support his claim to have been suffering
with Covid like symptoms (for example his request for a Covid Test) or other
notification to the NHS that he was suffering with these symptoms (as per the
30 letter to him of 20 July 2021). They set out the reasons why they considered
these “unless orders” should be granted. Further the respondent repeated

the application to dismiss the claimant's case under Rule 47 under grounds that the claimant failed to attend the hearing on 20/21 July 2021 and had shown "*no good cause for his failure to do so*". Also an application for costs was made under Rule 76 (1) (c) of the Tribunal Rules in relation to the postponed hearing of 20/21 July 2021. The basis for that was the respondent had been put to expense in relation to that hearing and as yet the claimant had not yet been able to substantiate his claim that he was suffering from Covid like symptoms. The respondent also advised that the medical notes were heavily redacted and while the images provided suggested the claimant may have had an "*impairment of some sort the extent of the redactions and selectiveness of the extract provided are insufficient to answer all the questions required under Section 6 of the Equality Act 2010. There was no contemporary evidence that the claimant was suffering from an impairment in October/November 2020 and it was unclear what impact such impairments might have on his day to day activities*"

46. On 10 August 2021 the claimant advised that he had contacted "*an organisation for legal representation in these circumstances*" and "*would like to ask for you to consider adjourning the case until I can obtain independent legal representation which is not unreasonable to understand in the circumstances*". In the meantime he invited the respondent to concede his "*disability discrimination, philosophical belief points and labour abuse points in this case and pay me my wages in compensation for the disability discrimination etc*". He also asked in email of 10 August 2021 to the Tribunal to order the respondent's "*lawyers to stop harassing and abusing me which is psychological abuse designed to upset me, degrade me and dehumanise me*".

47. On 17 August 2021 the Tribunal advised:-

47.1 The claimant was free to instruct any representative of his choosing but a postponement for this purpose was unnecessary and the application for a postponement refused. The claimant was advised

that there is *“plenty of time to instruct a representative before the next hearing, as there has been since the claimant’s dismissal on 6 November 2020 and the commencement of these proceedings on 28 December 2020”*.

5 47.2 The claimant was asked to confirm by return that no further medical evidence remained to be disclosed and that the Employment Judge saw no reason why it would be necessary or appropriate to redact dates and the respondent must be sent copies on which the date is visible.

10 47.3 Within seven days the claimant was required to advise in writing the disabilities he relied on. The current understanding was that the claimant alleged disability on the basis of anxiety, depression, obsessive compulsive disorder. He was advised that that the catch-all term *“unseen disabilities”* needed to be more specific. There had
15 been inconsistent references to PTSD and it was uncertain whether that was relied upon.

47.4 The claimant was also asked within seven days to set out in writing the effect of disabilities had on his day to day activities with examples.

20 47.5 If the claimant wanted to call his GP to give evidence that was a matter for him. If a witness order was required then the Tribunal would need to be satisfied by written evidence that the claimant had asked the GP to attend voluntarily without a witness order but the GP had declined.

25 47.6 That despite having read and reread the email correspondence copied to the Tribunal there was no evidence of harassment, psychological abuse or other unreasonable conduct by the respondent.

47.7 No “Unless Order” would be granted before the next hearing.

5 47.8 That the claimant must understand a failure to attend a hearing is a serious matter and that it is often necessary to provide evidence to prove the reason given for a failure was genuine. It was expected that evidence would be provided. While the issue of costs/expenses would be considered at the next hearing it was not acceptable to delay the provision of evidence until then.

47.9 The application for dismissal under Rule 47 had already been refused by Employment Judge Doherty.

10 48. By a series of emails of 18 August 2021 the claimant sought to give answers to the issues raised by the email of 17 August 2021 from the Tribunal. He made comment on the records obtained and indicated that the disabilities he relied upon were *“anxiety, panic attacks, OCD/adult autism, low mood, arthritis/joint pains, PTSD and insomnia”*. He commented on the day to day difficulties in relation to these impairments. He sent photographs of Covid testing kits but it was not clear if these were of his test or those of family members; when those tests were taken and whether they showed positive results. He believed it was inappropriate and intrusive to be asked to disclose information regarding health of a family member.

15 49. By further email of 27 August 2021 the claimant was advised by the Tribunal that as he had *“declined to confirm that he has now disclosed all of the medical evidence on which he will rely at the hearing it is necessary for me to set a final deadline, with an important consequence, namely that the claimant would only be permitted to rely at the hearing on medical evidence which had been disclosed before 4pm on 6 September 2021. It was also stated that dates and documents should not be redacted as that would run the risk of the Tribunal being prevented from seeing evidence which may help his case. In relation to the application for costs if the claimant now relied on a positive Covid test in relation to a family member or a member of his household then it would be in his interests to ask that person to attend the hearing in order given sworn evidence on the point. Given that test results positive or negative should have*

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been reported to the NHS, it should be possible to obtain evidence to confirm the test results reported”.

50. Email of 2 September 2021 the claimant indicated:-

5 *“Dear Public Authority I do not understand these proceedings. I am disabled and vulnerable. I want a lawyer. Thank you.”*

51. On 3 September 2021 the Tribunal advised the claimant by email timed 15.23:-

10 *“1) The claimant is, as always absolutely free to instruct a legal representative and has previously stated his intention to do so. If he is asking the Tribunal to appoint a lawyer, then, as explained in previous correspondence, the Tribunal has no power to do so and the claimant must make his own arrangements. Many sources of free legal advice and sometimes free representation are available.*

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2) The purpose and scope for the next hearing is set out in the Notice of Hearing if the claimant requires a further copy then he only has to ask for one. Additionally the claimant’s failure to attend the last hearing is the subject of an application by the respondent for an order for expenses(i.e. legal costs). The key issue will be whether the reason given by the claimant for his failure to attend that hearing was honest and reasonable.

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3) The Tribunal’s most recent Order in relation to medical evidence is clear and should require no further explanation. I will however repeat this here:-

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The claimant will only be permitted to rely at the hearing on medical evidence which has been disclosed to the respondent on or before a final deadline of 4pm on 6 September 2021”

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52. By email of 3 September 2021 timed 15:28 to the Tribunal the claimant responded:-

“ I want a lawyer.

5 *The state does have powers to appoint a lawyer.*

I do not understand exactly what you want me to do nor do I have the facilities to provide what you expect from me.

This is my reason why I want a lawyer please.

10 *We are disgusted by this public Authority suggesting my family and me are dishonest.*

My family request that you provide us with your Covid-19 guidelines during this pandemic.

When is the next hearing – I do not know when the next one is.

Thank you”.

15 53. The claimant was sent a further copy of the Notice of Hearing issued 30 July 2021 by email of 13 September 2021.

20 54. In respect of the proposed hearing of 7 September 2021 (by telephone) to discuss arrangements in respect of the hearing of 20/21 September 2021. The claimant did not connect to the call despite attempts to contact him. Mr McArdle for the respondent appeared and confirmed the respondent would ensure that the rules were followed with regard to Covid issues. The respondent would not be calling any witnesses. He was unsure whether the claimant was likely to call a witness or not.

Preliminary Hearing of 20/21 September 2021

55. At this Preliminary Hearing no appearance was made by the claimant. The respondent was again represented by Mr K Gibson, Advocate. No contact was made by the claimant prior to the Hearing to indicate whether he intended to appear or not. A clerk to the Tribunal called him approximately 10.15am to ask if he intended to appear. The claimant referred to his emails of 2 and 3 September 2021 (narrated above). He was asked whether he was requesting a postponement and again referred to the emails stating he was *“not willing to go ahead unless he had a lawyer”*.
56. That information was relayed to Mr Gibson. He was familiar with the terms of the email of 2 September 2021. The information within the email of 3 September 2021 was given to him. He moved for dismissal of the claims under Rule 47 of Rules of Procedure.
57. His submission was that this was the second occasion the claimant had not attended an important hearing. A motion for dismissal had been made on the previous occasion but refused. The respondent had made preparation for this hearing. Two files of documents had been prepared namely a bundle of documents paginated 1 – 97 in respect of the application for “strike out”; and a further file marked “PHR Bundle” paginated 1 – 173 which had been compiled in relation to the remaining issues the subject of the Preliminary Hearing. Both those files of documents had been posted to the claimant at his given address. The Royal Mail had returned the documents to his instructing solicitor with a Royal Mail sticker on the envelope marked “refused”.
58. There was no doubt that the claimant was aware of the Hearing. There was a history of him behaving unreasonably which had brought about the application for “strike out” on the basis that the manner in which the proceedings had been conducted was scandalous and vexatious.

59. There had been no sufficient evidence given to show why it was that he was not able to attend the previous hearing of 20/21 July 2021. The photographs of lateral flow tests (pages 159 and 162/163 of “PHR bundle”) appeared to show photographs of a lateral flow test device showing a positive and negative test but no indication of when this test was taken; who was taking the test; what connection it might with the claimant who was not here to give any evidence about the matter.

60. The reason given relating to legal advice for non attendance at this hearing was not a good reason given that he had made these requests before and the position had been explained to him. A previous request for postponement had been refused.

61. The issues at this Preliminary Hearing were issues that could be dealt with by the claimant giving evidence. He had been asked for medical records and what had been received was difficult to piece together. Mr Gibson made reference to various items of medical information within the files of documents.

Conclusions

62. Rule 47 of the Tribunal Rules of Procedure 2013 states:-

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence”.

63. That is a rule that is common to all kinds of hearing and would include this Preliminary Hearing.

64. The rule is pointed in directing that a Tribunal shall consider *“any information available to it, after any enquiries that may be practicable, about the reasons for a party’s absence”*.

5 65. In this case the practicable enquiry made was to telephone the claimant and seek his reasons for non-attendance. He made reference to the emails he had sent to the Tribunal of 2 and 3 September 2021 stating that he was not going ahead unless he had a lawyer. This reference to the emails of 2 and 3 September would indicate the oft made request by the claimant that the Tribunal appoint a lawyer for him. He states in his email of 3 September 2021
10 that contrary to what he has been told *“The State does have powers to appoint a lawyer”*.

66. The first request that the claimant made for a lawyer was in his email of 27 July 2021 (narrated above). He was then advised on 30 July 2021, amongst other matters, that the Tribunal was an independent body and it was not their
15 function to arrange legal representation for parties. The claimant was advised *“that he may wish to consider approaching the CAB, a solicitor or some other body which could provide him with legal advice but he is not obliged to do so and he can continue to represent himself”*.

67. On 10 August 2021 the claimant sought adjournment of the case until he could
20 *“obtain independent legal representation.....”* That request was refused on 17 August 2021 when the claimant was advised that he was free to instruct any representative of his choosing but a postponement for that purpose was unnecessary. It was stated that there was *“plenty of time to instruct a representative before the next hearing as there has been since the claimant’s dismissal of 6 November 2020 and the commencement of these proceedings on 28 December 2020”*.
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68. The email from the claimant of 2 September 2021 states: *“I want a lawyer”*. On 3 September 2021 directions were given from the Employment Tribunal to the claimant stating that the claimant was free to instruct a legal
30 representative. The direction stated that if the claimant was asking the Tribunal to appoint a lawyer then as explained previously the Tribunal has no

power to do so and the claimant must make his own arrangements. Again it was pointed out that there were many sources of free legal advice and sometimes free representation for Tribunal matters. The claimant's response to that was in his email of 3 September 2021 stating that "*I want a lawyer. The State does have powers to appoint a lawyer*".

69. Despite being advised on these separate occasions that the Tribunal did not have the power to appoint a lawyer for him and that representation was a matter for him he did not attend the listed hearing of 20/21 September 2021 on the ground that the Tribunal should appoint a lawyer for him.

70. If it is the case that the claimant did not seek to attend the hearing because he wanted to instruct representation himself then he had made a request for postponement of this hearing and that request had been refused on 17 August 2021 and not repeated. Accordingly he could be in no doubt that the hearing was to proceed. That refusal of postponement pointed out that he had time to instruct a legal representative and indeed had had that opportunity since his dismissal on 6 November 2020 and the raising of this claim on 28 December 2020.

71. I did not regard the reason given for non-appearance at this Preliminary hearing was a good reason. The claimant had been well advised that no legal representation would be arranged by the Tribunal. He had been told that his request for postponement to instruct a representative had been refused.

72. I considered that hearing the claim in the absence of the claimant was of no worth. Even if the application for "strike out" was unsuccessful he was not present to advise of his impairments and their effect on his day to day activities and whether they were long term in nature and be cross-examined on these matters. The information provided lack detail and his evidence was required to establish whether he was a disabled person at the relevant time as that is defined in the Equality Act 2010

73. Also I could not find in the correspondence any clear articulation of the philosophical belief upon which he relied in his discrimination claim despite

the Order contained in the Note of the Preliminary Hearing of 4 March 2020 and it would then be impossible to ascertain whether that philosophical belief would qualify under the Equality Act 2010

74. As far as the application for costs was concerned that was an incidental application but without the claimant's evidence and the reason for his given reason for non-attendance at the hearing of 20/21 July 2021 there would be prejudice caused in not having that information available. The reason for absence at that hearing is confusing in that the reason given at the time was that he was suffering from Covid symptoms. When asked for evidence he referred to family members being affected. It was not clear whether he was now suggesting that he required to isolate because family members with whom he had close contact had contracted the virus. The photographs of lateral flow test kit did not identify who was taking the test. One of those tests appeared positive and the other negative. The identity of the person taking the positive test was unknown. No evidence would be available as to that person's relationship to the claimant or what contact there had been.
75. I considered whether despite the absence of good reason for non-attendance at this hearing were circumstances which would not make dismissal of he claims appropriate but use could be made of other case management powers such as adjourning the case to a later date.
76. However, I did not find any good reason to do that within the history of the matter which has been set out at some length.
77. This was not a case where the claimant prior to the date of the hearing had indicated that he was unable to attend for some reason. The Tribunal had required to contact him to find out why he was not present. That did not indicate regard for the process.
78. Additionally of course the claimant had failed to attend the previous hearing in July 2021. He had requested a postponement of that hearing and been refused. Accordingly when he did not attend there was some reason to ask him to substantiate the reason he gave for non-attendance. The reason he

gave was because he was suffering from Covid like symptoms. Thereafter on being directed to the provide evidence of tests taken and reported to NHS he responded to suggest that family members were suffering Covid symptoms.

5 79. As indicated no substantial evidence had been produced of the claimant reporting any test result or any positive test result for him. Neither could any photographs of lateral flow tests identify any individual with whom he may have been in contact with and so required to self- isolate (if that was the reason now being given).

10 80. Additionally there had been real difficulty in having the claimant comply with Orders. I could not detect an articulation of the philosophical belief upon which he relied and the reasons why he considered he had been discriminated against on that ground. The same was true to a lesser extent of the information on disability. While some information had been provided relating
15 to the impairments relied upon there was an absence of necessary detail or how it was he claimed that he had been discriminated against because of disability. These were matters ordered in the Note of the Preliminary Hearing of 4 March 2021.

20 81. Those circumstances did not encourage me to consider that despite there being no good reason for non-attendance some alternative case management order should be made.

25 82. In all the circumstances therefore I considered that the claim made should be dismissed on the ground that the claimant had failed to attend the Preliminary Hearing of 20/21 September 2021 having had regard to and considered the whole information available and the reason for non-attendance.

Employment Judge: Jim Young
Date of Judgment: 14 October 2021
Entered in register: 20 October 2021
30 and copied to parties