



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss G Coffey  
**Respondent:** Umbroker  
**Heard at:** East London Hearing Centre (via telephone)  
**On:** 18 August 2022  
**Before:** Employment Judge Muir Wilson

## Representation

**Claimant:** Did not attend  
**Respondent:** Did not attend

# RESERVED JUDGMENT

The judgment of the Employment Tribunal is that the claim is dismissed under Rule 47 of the Employment Tribunal Rules 2013 because the Claimant has failed without a good excuse to attend the Final Hearing.

# REASONS

## Background

1. The Claimant submitted a claim form presented on 28 January 2022. The Claimant submitted she had been employed by Umbroker from 1 November 2021 until 1 January 2022. The Claimant claimed unfair dismissal. The Claimant also claimed entitlement to redundancy payment and that she had not been paid wages or for a notice period.
2. The Respondent has not responded to the claim.
3. On 16 March 2022 the Tribunal wrote to the Claimant with a strike out warning that an Employment Judge proposed to strike out her claim for unfair dismissal as it did not appear she was entitled to bring that part of her claim. It was further noted that a claim for redundancy payment can only be

made where a person has been continuously employed for two years. The letter informed the Claimant this did not affect the other complaints made in respect of the failure to pay notice and unpaid wages. The Claimant was asked to give reasons by 23 March 2022 as to why her complaint of unfair dismissal should not be struck out. Nothing was received from the Claimant.

4. On 29 March 2022 the Tribunal wrote to the Claimant by email and the Respondent by post. This Notice of Hearing provided the details of the Hearing and how to attend. The Notice included standard case management orders. Neither the Claimant or Respondent had communicated with the Tribunal following this Notice being sent.

## **Hearing**

5. By 18 August 2022, nothing had been received from either party to add to the Tribunal file since the original claim form submitted on 28 January 2022.
6. I started the telephone Hearing at 2pm on 18 August 2022. No parties attended. I remained in the virtual room until 2.15pm. Neither party joined or attempted to join the hearing. I then rejoined the telephone hearing at 2.24pm but no parties were in attendance and I left the room at around 2.30pm.
7. I asked the Tribunal Clerk to attempt to contact the Claimant by phone. At 2.50pm the Tribunal Clerk informed me he had contacted the Claimant and asked her if she was aware of the hearing date and would be attending. I was told the Claimant said she no longer wished to pursue her claim.
8. I went through the Tribunal file to review the email address used for the Claimant. The same email address has been used by the Tribunal for all communications to the Claimant since the Claim was first received. It is the email address the Claimant provided. The postal address used for the Respondent has been the one provided by the Claimant. I have not been able to establish any record of the Respondent. I have been able to ascertain the location of the address used, and have identified the spelling of the first line of the address has been incorrect to a minor extent, the building number and postcode however are correct.

## **Conclusions**

9. Rule 47 provides:

‘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.’

10. I had regard to the Court of Appeal case of *Roberts v Skelmersdale College* [2004] IRLR 69. Although it was decided under the old rules, there is sufficient similarity between the two rules that it remains good law. The following principles emerge (so far as they apply to the current rule 47):
  - the rule confers a very wide discretion;
  - the rule does not impose on an employment tribunal a duty of its own motion to investigate the case before it, nor to satisfy itself that on the merits the Respondent has established a good defence to the claim of the absent employee;
  - the Tribunal has a discretion to require the employer to give evidence, but no duty to do so;
  - before making a decision the Tribunal shall have regard to the information required under the rule.
11. I considered the information available. I had in mind the guidance in *Roberts* that there is no obligation on the Tribunal to conduct its own investigation into a case where a party fails to attend. However, I also had regard to the information available to me from the claim form and Tribunal correspondence and communications with the parties, and the Claimant in particular.
12. The Claimant's account in her ET1 is scant and lacks basic information as to her employment and the grounds of her Claim. There is has been no supporting material provided.
13. Crucially here, the initial burden of proof rests on the Claimant. Unlike the *Roberts* case, which was a case of direct dismissal in which it might have been possible (although the Court of Appeal found in no sense mandatory) for the Tribunal to make findings as to the reason for, and fairness of, the dismissal in the claimant's absence, that is not the case here.
14. I am satisfied communications were sent to the right email and postal addresses provided for each party in respect of this claim with the Tribunal.
15. The Claimant has positively confirmed she does not want to pursue her claim.
16. The position today was that there has been no substantive evidence provided by the Claimant in respect of her Claim such as to enable me to understand or evaluate the Claim. The lack of information from the Respondent and its failure to comply with directions might, at least in part, be fairly explained by the absence of information from the Claimant. However, this lack of evidence on both sides meant that even if it would have been in the interests of justice, I was not in a position to proceed with any consideration of the claim in the absence of the parties.

17. Here I did not find it credible that either party was not aware of today's fixed date for the hearing. I have also taken into account the Claimant's communication to the Tribunal Clerk.
18. Considering the historic non-compliance, the failures by parties to attend today and the failure by the Claimant to engage with her claim and the Tribunal, and her indication she no longer wishes to pursue it, I do not consider I ought to postpone the hearing, nor am I persuaded any further case management orders would enable the case to progress.
19. I had regard to the fact that the dismissal of a case under rule 47 is a severe sanction. I considered whether it would be right, as an alternative, to adjourn the hearing to another occasion. I decided that it, in the circumstances, it would not be right to do so. If the case were relisted, given the current caseload being dealt with by the Tribunal, it would be many months before it could come on for hearing. The delay would be inherently undesirable in a case where events are already historic.
20. I also had regard to Tribunal resources. There is huge demand for hearings in this region.
21. In all the circumstances, I dismiss the Claimant's case under rule 47, because she has not attended nor been represented at this hearing.

**Employment Judge Muir Wilson**  
**Date: 21 August 2022**