



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4104780/2020

Mr C Martin

**Claimant
No appearance**

Ministry of Defence

**Respondent
Represented by:
Dr A Gibson,
Solicitor**

JUDGMENT

10 The claim is struck out under rule 37 of the Rules contained in Schedule 1 of the
Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013
on the grounds

- That the manner in which the proceedings have been conducted by the claimant in terms of rule 37(1)(b) has been unreasonable and
- That it has not been actively pursued in terms of rule 37(1)(c).

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REASONS

1. A final hearing in the case had been listed to take place in Dundee on
20 26, 27 and 30 May. Two previous final hearings had been postponed, on
the first occasion because the claimant was said to have technical
difficulties on the first morning of a hearing which was to be heard remotely
and on the second occasion because the claimant said on the day before
the final hearing that he thought he had covid and could not attend.

E.T. Z4 (WR)

2. The claimant was ordered to comply with the Presidential Guidance in this regard and provide evidence of a positive covid test at the material time. He has failed to do so despite a number of requests.
3. On 10 May 2022 the claimant emailed the Tribunal (failing to copy in the respondent) with a sick line and an email saying - *Please find attached my drs line as I'm still unable to get about due to my asthma. Not sure how this will affect me getting to Dundee.* The sick line was dated 6 May 2022 and covered the period 6 May 2022 to 17 June 2022 and stated that the claimant was unfit to work due to "Asthma".
4. On 11 May 2022 the Tribunal emailed the claimant to say - *Your email below is acknowledged. Please note that whenever contacting the Tribunal Rule 92 requires that the other party is copied in. On this occasion we shall send your message, the attachment, and this reply, to the respondent's solicitor. It is not clear what you are seeking to do. The fit note refers to being unfit for work. A Final Hearing has been arranged for 26 – 30 May 2022 in person. That hearing can only be adjourned if there are exceptional circumstances satisfying the terms of Rule 30A. It is not understood that your message is intended as an application to adjourn the hearing. If you do wish to make that application that will require to set out the basis for doing so, you may wish to refer to Rule 30A, and it should be copied to the respondent's solicitor. The matter will then be addressed and a decision reached on whether or not to grant the application. It may be however that no such application will be made and that the Final Hearing proceed on those dates.*
5. On 25 May, the respondent wrote to the Tribunal and the claimant seeking clarification as to whether the claimant would attend the hearing the following day and making an application that the claim be struck out if the claimant failed to attend.
6. During the course of the day the Tribunal administration made a number of attempts to clarify with the claimant whether he intend to attend the hearing the following day. The claimant failed to clarify whether or not he would attend and instead emailed the Tribunal at 15.40 saying "I've waited to see if I was well enough to attend however I'm unable to at this point

and I'm sure I'll not feel any better by the morning." The claimant did not make any application to postpone the hearing.

7. The Tribunal administration then emailed the claimant again on the morning of the hearing to seek clarification as to whether he would attend the hearing. He responded in an email at 07.52 stating he would not attend.
8. In the circumstances, I postponed the hearing and parties were advised that a hearing on the question of the application for strike out would take place by way of telephone conference call. The claimant was asked to submit any objection to the respondent's application in writing in advance of the hearing and attend the hearing to advance any oral argument. Despite the efforts of the Tribunal to contact the claimant by telephone, he did not join the hearing. No objection to the respondent's application was received.
9. The respondent was represented at the hearing and Dr Gibson reiterated the basis of the grounds of his application. He also indicated that the claimant's failure to attend the hearing today together with his refusal to clarify matters until shortly before the hearing was due to take place demonstrated that the claimant was not actively pursuing his claim.
10. In the circumstances, I accepted the submissions of the respondent. It appeared to me that the claimant had no regard for the inconvenience and cost both to the Tribunal administration and the respondent his conduct had caused. He had been given three opportunities to advance his claim before the Tribunal and failed to do so on each occasion. His refusal to clarify whether he intended to attend the hearing until shortly before the hearing was due to commence was particularly egregious conduct which appeared to me to have been a deliberate attempt to cause inconvenience to the respondent.
11. In these circumstances, the Tribunal is satisfied that the claimant has failed to actively pursue his claim and has acted unreasonably both by failing to comply with Presidential Guidance in relation to the basis of the postponement of the last hearing and his failure to attend the hearing this morning, request of a postponement of the hearing or provide any

acceptable reason as to why he has not attended.

12. In the circumstances, his claim is dismissed.

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Employment Judge:	A Jones
Date of Judgment:	26 May 2022
Date Sent to Parties:	26 May 2022