



EMPLOYMENT TRIBUNALS

Claimant: Mr A Thirsk

Respondent: Secretary of State for Justice

HELD AT: Manchester

ON: 13 and 14 November
2024

BEFORE: Judge Johnson

REPRESENTATION:

Claimant: Unrepresented (attended day 2 only)

Respondent: Mr R McLean (counsel)

JUDGMENT

Upon the claimant not attending on Day 1 of this final hearing and failing to attend on Day 2, the judgment of the Tribunal is that:

- (1) The complaint of unfair dismissal is dismissed in accordance with Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.
- (2) No decision is made today regarding an order regarding costs against the claimant in accordance with Rule 76, but the respondent has confirmed that it is likely to make such an application in accordance with the procedural requirements provided by Rule 77.

REASONS

Procedural background

1. These proceedings arose from the claimant's summary dismissal on 28 December 2023 from his role of prison officer. This was following a disciplinary hearing regarding his conduct connected with working in

secondary employment while absent on sick leave from work with the respondent.

2. The claimant presented a claim to the Tribunal on 14 April 2024 following a period of early conciliation from 2 February to 28 February 2024. He brought a complaint of unfair dismissal.
3. The case was listed for a final hearing on 27 August 2024 and standard case management orders were included within this Notice.
4. The respondent presented a response on 24 May 2024 resisting the claim and arguing that the claimant was fairly dismissed by reason of his conduct and following a fair disciplinary process.
5. The case was considered by the Tribunal and on 26 June 2024, Judge Leach extended the duration of the final hearing from 1 day to 2 days. The parties were informed that any application to postpone because of witness availability must be made within 14 days of their receiving the Notice of Hearing. This was sent to the parties the same day and neither side sought a postponement.
6. The claimant provided an email on 18 July 2024 explaining that he had been facing a number of personal struggles and had missed some deadlines. On 31 July 2024, Judge Shotter asked that the parties agree revised case management orders. This was confirmed by the respondent on 14 August 2024 and a list of issues was also agreed.

The claimant's non attendance on Day 1 of the final hearing

7. The claimant failed to attend Day 1 of the final hearing and had queried in an email sent early in the morning when the hearing would take place. When contacted by the Tribunal, he replied confirming that he had started a work shift and would not be able to attend the hearing until Day 2.
8. I discussed the matter with Mr McLean who adopted a proportionate approach by not objecting to the hearing being adjourned until 10am on Day 2. The hearing bundle and statements were available and I would use the available time to read the papers.
9. During this short discussion the claimant had sent a further email pleading that his case be allowed to proceed. He was clearly in a position to receive and send emails from the address that had been provided to the Tribunal.
10. I wrote to the parties confirming the adjournment, providing a revised timetable for Day 2 and explaining to the claimant that he must attend at 10am that day or face the risk of a dismissal of his claim and an application for costs from the respondent in respect of the prejudice they had sustained. The email also included details of the Tribunal address.
11. Additionally, applying the overriding objective, I noted that the claim of unfair dismissal considered the argument that the decision to dismiss was not within

the range of reasonable responses available to a respondent. It was therefore possible to conclude the final hearing and to deliver a judgment before the conclusion of day 2 of the final hearing.

The claimant's non attendance on Day 2 of the final hearing

12. I was ready to begin the hearing at 10am on Day 2 and Mr McLean and the respondent's dismissing manager witness Mr Pearson were also ready. The claimant had not arrived and had not given any warning or explanation that he might be late.
13. I waited until 10:15am to allow a short period of time for the possibility that the claimant was still proceeding through security or was not waiting in the designated waiting room. Once it was confirmed by the Tribunal's administration that he was not in the building, I decided it was appropriate to begin the hearing without delay as the respondent had already suffered a great deal of prejudice in terms of time and resources committed in waiting for the claimant to arrive on what was the second day of the final hearing. Indeed has demonstrated a great deal of patience and trust in agreeing that the claimant be given an opportunity to attend the hearing today as he had promised yesterday.
14. Mr McLean was unable to provide any further information regarding the claimant's whereabouts today and neither he nor his instructing solicitors had not received any communication from the claimant to explain that he would be delayed.
15. Accordingly, I was satisfied that by failing to attend or be represented at both Day 1 and Day 2 of the final hearing, the claim should be dismissed in accordance with Rule 47. This was also a decision that was in the interests of justice under the overriding objective Rule 2. The claimant had been afforded a great deal of leniency which took into account his circumstances, but a point had been reached where the respondent and the Tribunal had been disproportionately prejudiced by the claimant's failure to attend.
16. Understandably, Mr McLean wished to consider the question of costs under Rule 76, but explained that his instructing solicitor would need to prepare a costs schedule and they were aware of the procedural requirements of Rule 77 and in particular the time limits for making such an application following the delivery of the judgment today.

The claimant's attendance at the Tribunal following the delivery of the judgment on Day 2

17. Once I had delivered my judgment and concluded the hearing shortly before 10:30am, I was informed that the claimant had arrived at security. This occurred at 10:30am or shortly afterwards. However, he was too late as the judgment had been delivered and the respondent released following the conclusion of the hearing. The hearing had been listed to begin at 10am, it was delayed until 10:15am and the claimant had simply failed to appreciate the importance of attending the Tribunal at this designated start time or

contacted the Tribunal to explain that he would be late and the reason for his delay.

Conclusion

18. The claim is therefore dismissed in accordance with Rule 47. .
19. The respondent is reminded that if they wish to make an application for costs, they should ensure that such an application is made within the period of 28 days after the date on which this judgment is sent to the parties in accordance of Rule 77.

Employment Judge Johnson

Date: 14 November 2024

JUDGMENT SENT TO THE PARTIES ON

20 November 2024

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>