



EMPLOYMENT TRIBUNALS

Claimant: Miss Catarina Capapinha
Respondent: Gil Monsalves Martins
Heard at: East London Hearing Centre (by CVP)
On: 19 January 2024
Before: Employment Judge B Beyzade

Representation

Claimant: Not present or represented
Respondent: Mr Ashley Powis, Solicitor

JUDGMENT

The Judgment of the Tribunal is that:

- 1) The claimant being neither present nor represented during the Preliminary Hearing in public listed at 10.00am on 19 January 2024 at the East London Hearing Centre by Cloud Video Platform and at a point in excess of 50 minutes after the time set for the Preliminary Hearing and there being no answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with her at 09.40am and 10.13am, and the claimant not having responded to email correspondence sent by the Clerk to the Tribunal at 10.18am, and the claimant not having otherwise communicated with the Tribunal in relation to her non-attendance at the Preliminary Hearing thereafter; and on the respondent's application made at the Bar, and having considered the content of the Tribunal file, the Tribunal dismisses the claimant's claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

REASONS

Summary of claim and procedure to date

1. The claimant lodged a claim on 29 October 2022 for unfair dismissal and discrimination (the claimant's protected characteristic and the type of discrimination was not specified within the Claim Form), which the respondent defended.
2. Following a Preliminary Hearing for Case Management on 07 August 2023 and the claimant's non-attendance at that hearing, Employment Judge Millns issued directions to the parties, and the claimant was directed to confirm whether she required an interpreter, an explanation for her non-attendance at that hearing, a response to the Tribunal's letter of 12 December 2022 requesting particulars relating to her discrimination complaint, and a statement of remedy within seven days of the date of the order being sent to the parties (those orders were sent to parties on 10 August 2023). The claimant was advised in those orders at paragraph 7 that the Tribunal may consider striking out all or part of her claim. A Preliminary Hearing in public was listed on 02 November 2023 by Cloud Video Platform ("CVP").
3. The respondent sent an email to the Tribunal on 12 October 2023 advising that the claimant had failed to comply with the Tribunal's orders.
4. The claimant attended the hearing on 02 November 2023 in person whereas the respondent attended the hearing by telephone. Due to a language barrier, the hearing could not proceed. It was re-listed to take place on 19 January 2024 at 10am by CVP for 3 hours before an Employment Judge.
5. Notice of today's Preliminary Hearing in Public by CVP was sent to the parties on 25 November 2023 together with joining instructions.
6. The Notice of today's Preliminary Hearing in Public by CVP was resent to the parties on 14 December 2023 together with joining instructions.
7. A Portuguese (European) interpreter (Ms Elizabeth Cardoso) had been booked by the Tribunal to attend today's hearing.

Preliminary Hearing in public on 19 January 2024

8. The case called for Preliminary Hearing at East London Hearing Centre by CVP on 19 January 2024 at 10.00am.
9. There was no appearance for or on behalf of the claimant.
10. The respondent was represented by Mr Ashley Powis, Solicitor at the Preliminary Hearing.
11. A Portuguese (European) interpreter (Ms Elizabeth Cardoso) attended today's hearing.
12. The case file records that Notice of the date and time set down for Hearing was sent to the claimant and the respondent on 25 November 2023 and 14 December 2023 at the correspondence address provided by them to the Employment Tribunal for the purposes of receiving such communications. No return of the Notice of Hearing issued to the claimant, or the respondent has been received by the Tribunal.

13. The claimant did not write to the Tribunal to provide the information they were directed to provide by Employment Judge Millns.
14. The respondent had filed a Preliminary Hearing Bundle consisting of 46-pages, to which reference was made by the respondent's representative during the Preliminary Hearing.
15. On the sitting Judge's directions, the Clerk to the Tribunal checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Hearing since correspondence was sent to parties by the Tribunal by emails on 25 November 2023 and 14 December 2023 respectively.
16. On the sitting Judge's direction, the Clerk to the Tribunal attempted to communicate with the claimant on the telephone number provided by the claimant for that purpose at 09.40am and 10.13am. Although the claimant did not respond to the telephone communications, the claimant was advised by voicemail message on the morning of 19 January 2024 that the claimant had not attended the hearing and that she must contact the Tribunal or attend the Preliminary Hearing by 10.20am, in the absence of which the Preliminary Hearing will proceed in her absence.
17. The claimant was advised by emails sent at 09.50am and 10.18am on 19 January 2024 that the claimant must attend by 10.20am, in the absence of which the Hearing will proceed in her absence. The claimant was advised to contact the Tribunal if she was experiencing technical difficulties.
18. The Tribunal sat at 10.15am and then adjourned briefly at 10.20am and sat again at 10.32am to afford the claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding her non-attendance. After a brief adjournment, the Tribunal reconvened at 10.32am.

Dismissal of claim pursuant to Rule 47 of the Employment Tribunal Rules

19. At 10.54am and in light of the claimant's unexplained non-attendance and in the absence of a good reason (which was satisfactory to the Tribunal), and on the respondent's application, the Tribunal dismissed the claimant's claim in terms of Rule 47 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules"). Rule 47 of the ET Rules provides:

"47. 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."

20. I took into account the nature of the claimant's complaints, the issues that the Tribunal were required to investigate and determine (insofar as they were possible to ascertain from the pleadings), the issues in relation to the claimant's unfair dismissal complaint (including the issues relating to the identity of the claimant's employer and the claimant not having two years continuous service) and the lack of specification in respect of the claimant's discrimination complaint. I considered the documents on the Tribunal file. I was satisfied that the claimant had been afforded ample opportunity to attend the Preliminary Hearing and she had failed to attend the hearing on 19 January 2024. I took into account the Tribunal's overriding objective (Rule 2 of the ET Rules).

21. I had regard to the content of the ET1 Form and the ET3 Form. The respondent's representative pointed out that the claimant pursues two complaints of unfair dismissal and an unspecified discrimination claim. In respect of the claimant's unfair dismissal claim I was referred to paragraphs 2 and 3 of the respondent's response and I was advised that the respondent did not employ the claimant at any time. I was advised that the claimant was employed by Clermont Hotel Management Limited, but that she was only employed by them from 20 April 2022 to 29 June 2022. She was not employed by Clermont Hotel Management Limited or by the respondent prior to those dates. Therefore, the respondent submitted that the claim was brought against the incorrect respondent (who was not her employer) and in any event the claimant was not in employment with Clermont Hotel Management Limited for a period of 2 continuous years and as a result she could not claim unfair dismissal. The respondent also submitted that the discrimination claim is unspecified and the respondent still did not understand the case which it had to answer. In addition, the claimant had failed to attend the first Preliminary Hearing in August 2023 and she had not complied with the Tribunal's orders made at that hearing. In the circumstances, I was invited to dismiss the claimant's claim under Rule 47 of the ET Rules.
22. I consider that the claimant's non-attendance is capable of being explained by her having decided not to pursue her claim now that she knows about the potential issues outlined above. That explanation is consistent with the claimant's apparent failure to communicate with the Tribunal and the respondent (except in relation to her email sent at 10.12am today asking for the hearing details [which were resent to the claimant at 09.50am and a further communication was sent by the Clerk to the Tribunal to the claimant at 10.18am], following which she did not communicate with the Tribunal further).
23. No other explanation has been put forward for not attending the hearing.
24. I am satisfied that the Tribunal has made all enquiries that may be practicable about the reasons for the claimant's absence.
25. The claimant did not attend today's hearing and Rule 47 of the ET Rules specifically deals with non-attendance at a hearing. It was not appropriate to hear the claimant's claim in the claimant's absence given the nature of the claim and the issues before the Tribunal. I therefore dismissed the claimant's claim. Prior to dismissing the claim, I considered and gave full effect to the Tribunal's overriding objective (Rule 2 of the ET Rules). Dismissing this claim under rule 47 is proportionate and in accordance with the Tribunal's overriding objective in all the circumstances.

Employment Judge Beyzade
Date: 19 January 2024