Case Number: 3315260/2020

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Bindi	v	Metropolitan Housing Trust Limited

Heard at: Watford, in person **On**: 10 December 2024

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant: Not present or represented
For the respondent: Mr Jonathan Cook, of counsel

JUDGMENT

The claimant's claims with the above case number (they are of unfair dismissal and discrimination because of race) are dismissed under rule 47 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1 In these proceedings, the claimant claims that he was dismissed unfairly (the reason for the claimant's dismissal being claimed by the respondent to have been redundancy) and discriminated against because of his race. The claim was the subject of case management orders made by Employment Judge ("EJ") Tobin on 7 April 2022, which were recorded in a document which was sent to the parties on 8 April 2022. Those orders included one (numbered 4.2) for the provision of witness statements to be provided by each party to the other by 28 July 2022. The case was listed to be heard on 19-23 September 2023 inclusive in person at Watford Employment Tribunals.

2 On 4 May 2023, the respondent applied for the giving by one of its witnesses of evidence by video (via Cloud Video Platform). That application was made in relation to the hearing of 19-23 September 2023. The witness was Ms Rajkoomar. The reasons given for the application were that (1) Ms Rajkoomar was no longer employed by the respondent, (2) she was unable to attend the hearing in person because of the commitments of her job and (3) she had sole childcare responsibilities for her child. On 9 June 2023 that application was granted by EJ R Lewis.

3 The claimant sought to appeal that decision to the Employment Appeal Tribunal ("EAT"). It appeared that he had not complied fully with the requirements for doing so, and his notice of appeal had as a result been filed late.

4 On 15 and 17 September 2023 the claimant applied for the postponement of the hearing starting on 19 September 2023. That was for a number of reasons, including claimed breaches by the respondent of the orders made by EJ Tobin on 7 April 2022.

5 The hearing of 19-23 September 2023 was adjourned by EJ Quill on 18 September 2023 because of a lack of judicial resource to hear it.

6 I was told by Mr Cook that the respondent had provided the claimant with a hearing bundle during September 2023.

7 The hearing was re-listed to take place on 10-17 December 2024.

8 On 25 September 2023, the respondent made an application for the strike-out of the claimant's claims because of the claimant's failure to comply with the order to provide a witness statement. I was told by Mr Cook on 10 December 2024 that the respondent had at that time sent the claimant its witness statements with password protection and said that it would give him the passwords for the statements once he had sent the respondent his witness statement, but that the claimant had not provided a witness statement at any time up to and including 10 December 2024.

9 A number of emails were sent by the parties to the tribunal in 2024, including one from the respondent of 3 June 2024, pressing its application of 25 September 2023 for the strike-out of the claims since that application had not been put before a judge. All of those emails were the subject of a letter from the tribunal dated 30 September 2024, in which EJ Quill's directions were recorded as follows.

> "The Respondent's emails of 3 June 2024 (19:55), 6 June 2024 (18:14), 13 June 2024 (15:47) and the Claimant's emails of 5 June 2024 (21:51) and 25 June 2024 02:08) have been referred to a judge today (15 August 2024).

> Firstly, the Respondent must write by 3 October 2024 if it disagrees with Claimant's [contention] that it does not want the 3 June 2024 application to be dealt with.
>
> Secondly, if not withdrawn, parties must write by 7 October 2024 with dates to avoid for a preliminary hearing and comments about whether that hearing should be by video or in the building."

10 On 3 October 2024, the respondent applied for permission to adduce evidence from Ms Rajkoomar at the hearing of 10-December 2024 by video. That was for the same reasons as those which were the basis of the first application for Ms Rajkoomar to give evidence by video.

11 On 13 November 2024, EJ Quill caused a letter to be sent by a Legal Officer, Ms S Bibi, giving his response to the parties' emails sent since 30 September 2024. He said that a preliminary hearing before the scheduled final hearing was not possible. He continued:

> "I am converting the first day, 10 December 2024, to a public preliminary hearing before a judge sitting alone.
>
> That judge will make any appropriate decisions and orders. In particular, the judge will decide whether a fair hearing can still take place between 11 December 2024 and 17 December 2024 and, if not, what the consequences should be. If a fair hearing cannot take place between those dates, then the judge might decide to postpone and supply new dates. Alternatively, the judge might decide to strike out either the claim or the response. If the claim is struck out, that would be the end of matter, subject to any application for costs. If the response is struck out, then decisions about when a Rule 21 hearing would take place would need to be made.
>
> In order to agree that the hearing proceeds from 11 December 2024 to 17 December 2024, the judge will need to consider whether the parties each complied with disclosure orders, and co-operated to finalise a bundle, and supplied the other side with witness statements. If those things have not taken place, the judge will hear from each side about the alleged reasons.
>
> The Claimant's application that the response be struck out because (i) the Respondent did not make an application to the Tribunal on 25 September 2023 and/or (ii) subsequently lied about having done so is refused. The response is not struck out for that reason. The Tribunal file shows that it was correctly addressed to the Tribunal and (apparently) to the Claimant as well (though I make no finding as to whether the Tribunal or the Claimant received it on that date). It follows that the contents of the Respondent's representative's 3 June 2024 (19:55) email are truthful, to the best of the author's knowledge.

The Respondent's representative's email of 6 June 2024 (18:14) is peculiar. It seems to have been written on a "reply all" basis, but without realising that (i) the Claimant had indeed sent his email to the Tribunal and that (ii) therefore, the Tribunal and the Claimant would be copied in. However, nothing in the contents would justify strike out.

The Claimant's email of 25 June 2024 does not, in my opinion, accurately state the Respondent's position. However, it was copied to the Respondent's representatives. Although I had not seen it at the time I gave instructions for the 30 September letter, I note that the Respondent's representative responded to it on 18 July. Thus, it would not be appropriate to strike out the claim based on the 25 June 2024 email alone.

The Claimant's application for an Unless Order is refused.

The Claimant's application for witness orders (paragraph 16 to 29 of the 22 October 2024 application) is refused. Witnesses are only required to give evidence about the substantive matters set out in list of issues. The Claimant's purported reasons for seeking these witnesses is so that he can ask them questions. If the Respondent fails to call sufficient witness evidence to prove a fact which the Respondent asserts (or to refute a fact which the Claimant asserts), the Claimant can make submissions about that after the evidence phase of the hearing has concluded.

Ms Rajkoomar has permission to give evidence by video, subject to the Tribunal which is hearing the case being satisfied that the arrangements that have been made for her to do so are suitable.

If both parties are content that the final hearing is ready to start on Monday 10 December, and that no preliminary hearing is required, they may make a joint application, no later than 4pm on 20 November 2024, for the public preliminary hearing to be cancelled, and for the final hearing to start on 10 December 2024. Unless both parties agree, however, the preliminary hearing will take place as mentioned above."

12 On Thursday 5 December 2024, at 15:58, the claimant sent a 23-page document entitled "Urgent Postponement Application 'By Consent'", seeking the postponement of the hearings of 10 and 11-17 December 2024. That application was opposed by the respondent in an email sent at 09:23 on 6 December 2024 and the application was refused by Regional Employment Judge ("REJ") Foxwell on Monday 9 December 2024, in a letter of that date, in which the reasons for the refusal were stated as follows.

> "1. Not in the interest of justice to delay the hearing of outstanding applications.
> 2. An intention to appeal is not a reason to grant a postponement.

3. Postponement would result in the parties losing their current slot in the list and therefore to delay."

13 At 09.23 on Monday 9 December 2024, the claimant sent three pdf documents by email to the EAT and the Watford Employment Tribunals office. One of those documents was entitled "Supplemental Statement in Reply to the Respondent's 06.12.24 Submissions". I do not know whether or not that email was put before REJ Foxwell before he refused the claimant's application for a postponement, but it contained as far as I could see nothing which could have altered REJ Foxwell's judgment in that regard.

14 After receiving the letter stating that refusal, the claimant sent at 16:35 on 9 December 2024 an email to the EAT, copying it to the Watford Employment Tribunals, entitled "Critically Urgent Request for referral to the Emergency Applications Judge". In the body of the email, this was said.

> "The lower Tribunal appears to compound one substantive Procedural Error after the next, and has now refused to Postpone a Preliminary Hearing set for tomorrow 10.12.24 and the Full Trial, that immediately follows, throughout 11-17.12.24.
>
> The position has put me in life threatening risks to my health, as I must before 9.30am, file some element of the Appeal of the Order listing the Preliminary Hearing, that Order dating to 13.11.24, and this is so, despite the 42 day period not expiring until 4.00pm, on Friday, 27.12.24.
>
> The lower Tribunal have today made an Order, refusing the Postponement, but had done so upon a Substantive Procedural Error, of excluding any reference to the current extant Appeal, making their Order on the entirety of the pending Appeal, that is not as yet filed.
>
> This document is copied to the Lord Chancellor to the United Kingdom, as it is an abuse of a Litigant in Person but also an abuse of the National Health Service (NHS) to compel a Litigant, to file a new Appeal, some 18 days ahead of the expiry of the 42 day Statutory Period of Appeal, thus a loss of 43%, upon the Appeal Tribunal not simply Ordering a Stay of the proceedings, at least until Friday 27.12.24.
>
> As has been already explained the Appeal Tribunal has had a Stay Application from the Appellant under consideration for over 450 days, yet without explanation there has been no update on that position, and seemingly no engagement with the Application laid before the Appeal Tribunal on 06.12.24.
>
> This matter is critically urgent, and I ask that the Registrar or the Emergency Applications Judge to the Employment Appeal Tribunal, communicate, if at all possible a decision on 09.12.24, as to whether the lower Tribunal, the

Employment Tribunal proceedings are either (a) Stayed or (b) not Stayed, by the Employment Appeal Tribunal?

In the event that there is no answer and no action, and very severe personal risks to my health, I shall sit within and A and E Hospital Department working through the night, where I've had no more than four hours sleep already in the last 48 hours, but I shall place myself within a Hospital setting given the enormity of the risks and do whatever is possible to have a new Appeal of the 13.11.24 Order, filed and served, ahead of 9.30 am on 10.12.24.

No person should face a Risk to Life to file and Appeal in the United Kingdom, where they are forced to file that Appeal early, at a 43% loss of the statutory Appeal Period of, where the Employment Appeal Tribunal accept by their own documents, that a Stay of the ET proceedings has been under consideration for over 450 days.

May I please, politely and pressingly, renew the request for Urgent Action and a decision on the two outstanding Stay Applications.

I have included all of the relevant documents, inclusive of the Applications and eventuated Orders of the lower, lower Tribunal.

I would hope that each of the Parties may have a settled position of certainty from the Employment Appeal Tribunal on 09.12.24, so as not to have the Appellant and dependent upon NHS Hospital Support, to file an additional Appeal, pre-9.30am, tomorrow.

This document has been copied to the Respondent and the Lord Chancellor to the United Kingdom."

15 I conducted the hearing of 10 December 2024. By 10:20 the claimant had not attended, so I asked the clerk to bring the respondent into the hearing room. At 10:21 the claimant sent a further email to the EAT, copying it to the Watford Employment Tribunals, the whole of which was as follows.

"Emergency Application for the Postponement of the Hearing

Further to the Order of the Watford Employment Tribunal, dating to 09.12.24, an Emergency Application, is here filed pursuant to the vacation of the Preliminary hearing of 10.12.24 and the full trial listing of 11-17.12.24.

As acute and perverse risks to the health and welfare of the Claimant, and upon designated referrals to the Lord Chancellor, the lower Tribunal are requested not to attempt to fetter the discretion of the Appellate Tribunal, or to proceed in opposition to the adjournment of the Preliminary hearing and

> the successive Trial, so as to undermine the jurisdictional supremacy of the Appellate Tribunal.
>
> The Employment Tribunal are asked to set out a position, as of the earliest convenience to the lower Tribunal, as to whether there is an intent to continue with the Preliminary hearing, in spite of the filed Appeal of the refusal of Postponement, as set out within the Order of 09.12.24.
>
> The Court of Appeal as a raft of Emergency Powers, in circumstances such as these, where it may be necessary to file appropriate Applications before the Court of Appeal, during this Business Day.
>
> Whilst this may endanger my life, the fight for justice must continue, and upon that I would be grateful for an early indication from the Watford Employment Tribunal, as to its proposed course of action in relation to this Emergency Postponement Application, upon the commencement of an Actual Appeal as opposed to an Intention to Appeal.
>
> This document has been copied to the Respondent's representatives, remain under a duty to assist the Tribunal, as Officers of the Tribunal.
>
> I apologise to the EAT, as the duty to make this further Emergency Postponement Application, has impacted, by way of a short delay, on the filing of the Part B Component to the Application of Appeal.
>
> Emergency Application of Postponement
>
> Mr A Bindi
> 10.12.24"

16 That email was drawn to my attention by Mr Cook, and it was shortly afterwards forwarded to me by my clerk.

17 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 ("the 2013 Rules") applied. That 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."

18 I therefore took careful stock of the situation. Mr Cook told me that the claimant had been asked to send his witness statement to the respondent in emails (of which there were copies at pages 439-436 in the hearing bundle which was

before me) of 19 November, 25 November, 30 November, 2 December and 3 December 2024, but that the claimant had replied to none of those emails.

19 I therefore looked at the contents of the tribunal's file to see whether or not the claimant had stated his case in sufficient detail in the ET1 claim form (or in a document or documents accompanying it) for his evidence to be discernible without the tribunal having a witness statement from the claimant before it. It seemed to me that the ET1 form did have enough by way of factual assertions in it to enable the respondent to know what was the claimant's core evidence, and that the ET1 could therefore have been taken to contain a statement of the claimant's evidence.

20 I pointed out that the respondent could have given the claimant its witness statements without password protection so that he could have prepared for the hearing having seen them in advance.

21 Altogether, the situation was highly unsatisfactory as far as the interests of justice were concerned, but what was in my view of paramount importance were the following factors.

21.1 The claimant had repeatedly failed to engage with the respondent in regard to compliance with the tribunal's order for the provision by him of a witness statement at a time when, if he had engaged with the respondent and even said that his evidence was all to be found in the ET1, he could have been sent the respondent's witness statements in sufficient time to prepare properly for the hearing of his claims which, if it was going to happen, was going to start on 11 December 2024.

21.2 The claimant's sole, or at least his main, focus until that attempted engagement by the respondent with him was on the decisions of two Employment Judges to permit the respondent to adduce evidence from one of its witnesses by video.

21.3 The claimant had sought an order from the EAT staying the proceedings before the Employment Tribunal, when (as far as I was aware) the EAT had no power to order such a stay, but in any event there was currently no stay (however granted) of the Employment Tribunal proceedings.

21.4 The claimant had not attended the hearing before me, and it appeared clear to me from that non-attendance and what he had written to the EAT, copying it to the Watford Employment Tribunals, that he did not intend to attend the hearing on the following day, 11 December 2024.

22 In those circumstances, I decided that the claim should be dismissed. That was because I concluded that it would be contrary to the interests of justice for the respondent to be forced to attend on the following day, incurring yet more costs and inconvenience, in the circumstance that the claimant's conduct and

communications showed that he was not intending to attend the hearing on the following day. On any view, the claimant was in clear breach of the tribunal's order for the provision of a witness statement, and he had failed to attend the hearing before me without either apologising for his failure to attend or providing, for example, medical evidence of an inability to attend.

23 I nevertheless record here that the claimant may apply for a reconsideration of this judgment under rule 71 of the Employment Tribunals Rules of Procedure 2013. Such an application would need to be made within 14 days of the sending of this judgment to the parties and would need to "set out why reconsideration of the original decision is necessary". Of course an extension of time could be granted for the making of such an application, but there would have to be good reason for such an extension. In any event, if the claimant made an application for reconsideration of this judgment without having (1) provided a witness statement in compliance with order 4.2 of EJ Tobin, to which I refer in paragraph 1 above and (2) stated an intention to attend in person a re-listed hearing of his claims, then his application for reconsideration would be unlikely to succeed: his application for reconsideration would then be likely to have no reasonable prospect of success and would accordingly be liable to be refused by me.

_____

Employment Judge Hyams
Date: 13 December 2024

JUDGMENT SENT TO THE PARTIES ON
15/1/2025

FOR THE TRIBUNAL OFFICE
N Gotecha