



EMPLOYMENT TRIBUNALS

Claimant: Ms P Mittal

Respondent: Blind Veterans UK

Heard at: London Central

On: 29 June 2017

Before: Employment Judge H Grewal
Ms M Taylor and Ms H Szumowska

Representation

Claimant: No appearance

Respondent: Ms R Thomas, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1 The Claimant's application for a postponement dated 27 June 2017 is refused.
- 2 The claim is dismissed.

REASONS

1 These proceedings were instituted on 29 April 2016 and relate to the Claimant's employment with the Respondent between 13 October and 11 December 2015. The complaints to be determined were identified at a preliminary hearing on 1 July 2016. They were complaints of direct race discrimination and victimisation under the Equality Act 2010.

2 The case has been postponed on two previous occasions – in October 2016 because the Tribunal did not have the judicial resources to hear it and in March 2017 because the Claimant had made arrangements to be abroad before she was notified of the date of the hearing. On 29 March 2017 it was listed for a three day hearing due to start this morning.

3 The Claimant has been in contact with the Respondent and the Tribunal through May and June this year. She sent the Tribunal an email on 25 June at 20.10 to inquire about a witness order. There was no reference in that communication to, or any indication of, her having any health issues.

4 On 27 June at 22.24 the Claimant sent an email to the Tribunal which was copied to the Respondent. In that email she requested a postponement of today's hearing "*due to severe depression*". She said that she had sought medical assistance for it and would be able to supply documentation when it became available. She said that she was not in a fit state to attend the Tribunal but would be able to do so in three weeks' time.

5 On 28 June the Respondent responded to that application. Their response was copied to the Claimant. The Respondent objected to the application for postponement and noted that no medical evidence had been provided in support of it. The Claimant's application was not processed prior to the start of the hearing this morning.

6 The Claimant did not attend this morning.

7 The Claimant's application to postpone the hearing on the grounds of health was refused. There was no medical evidence that the Claimant was unable to attend the hearing. The Claimant had not prior to 27 June given any indication that she might not be well enough to take part in the hearing. Her email of 25 June indicated that she was expecting the hearing to go ahead this morning. If the hearing had been postponed, the Tribunal would not have been able to list it again for several months. Fourteen months had already passed since the claim was first presented. The matters to which it related occurred over 18 months ago. The Respondent was ready to proceed and had attended with all its witnesses. A postponement would lead to the Respondent, which is a charity, incurring further costs. For all those reasons, the Tribunal concluded that it was not in accordance with the overriding objective to postpone the case.

8 Having decided not to postpone, we then considered how we should proceed. Rule 47 of the Employment Tribunals Rules of Procedure 2013 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. 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."

In light of the fact that in complaints of direct race discrimination and victimisation the onus is on the claimant to prove a prima facie case before the burden shifts to the respondent, there did not seem any point in putting the Respondent to the trouble and expense of having to rebut a prima facie case that had in fact not been made out. As the Claimant was not present to put any evidence before us, it appeared to us that the most appropriate way to deal with the matter was to dismiss the case.

Employment Judge Grewal
29 June 2017