



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr L Theaker

British Gas Trading Limited

Heard at: Leeds

On: 14 January 2019

Before: Employment Judge JM Wade

Appearance:

For the Claimant: No attendance

For the Respondent: Miss Mills solicitor

JUDGMENT

The claimant's complaints are dismissed upon his failure to attend or be represented at today's public preliminary hearing, pursuant to Rule 47.

REASONS

1. The issue for determination today was whether the claimant's disability discrimination and unfair dismissal complaints could proceed. There were clear time limit issues. A chronology relevant for today is as follows:

- 1.1. 2016: major episode of depression (March to November, 190 days' absence);
- 1.2. 2017: major episode of depression (April to December 167 days' absence);
- 1.3. 2018: no major episode but other short term absences
- 1.4. 8 October 2018: dismissal for attendance
- 1.5. Undated appeal submission referring to the "Disability Discrimination Act"
- 1.6. 21 November 2018: appeal against dismissal rejected;
- 1.7. 10 December 2018: claimant's fortieth birthday
- 1.8. January 2019 to March 2019: claimant's father unwell;
- 1.9. January 2019: claimant describes the onset of a major episode of depression
- 1.10. 15 March 2019: claimant's father passed away
- 1.11. 26 to 27 March 2019 EC conciliation/certificate (Centrica – British Gas)
- 1.12. 11 April 2019 EC conciliation/certificate (Centrica)
- 1.13. 12 April 2019: claim presented; preliminary hearing listed for 5 June 2019
- 1.14. 29 May 2019: claimant postponement request to secure legal representation (also attaching fit note described as "latest" for four weeks, diagnosis "depression"); unavailability also concerning administering late father's estate.
- 1.15. 4 June 2019: notice of postponement and relisting hearing for 12 July 2019
- 1.16. 8 July 2019: claimant postponement application; same reasons; unwell until 20

August 2019; fit note provided;

- 1.17.15 July 2019: preliminary hearing postponed to 29 August 2019;
- 1.18.29 August 2019: preliminary hearing; issues clarified and public hearing (limitation, fixed for 29 October 2019);
- 1.19.2 September 2019: Orders and notice sent containing usual information about guidance and information on publicly available websites, and the need to comply with orders and possibility of strike out/unless orders etc;
- 1.20.21 September 2019: full account by email of claimant's case on limitation with appendices;
- 1.21.22 October 2019: respondent seeking witness statement and attaching 29 October orders;
- 1.22. Hard copy of limitation hearing bundle sent to the claimant by post in preparation (Ms Mills tells me today);
- 1.23.29 October 2019: no attendance from the claimant; telephone call from the clerk records unable to attend (stressed out/cannot attend);
- 1.24.29 October 2019: show cause against strike out letter issued to the claimant with response required by 12 November 2019;
- 1.25.11 November 2019: email with explanation from the claimant (diary mistake/family caring responsibilities/counselling for the claimant has started)
- 1.26.20 November 2019: notice of postponed hearing sent to the claimant for 13 January 2020;
- 1.27.4 December 2020: letter to the parties confirming the January hearing is to determine limitation;
- 1.28.9 January 2020: Ms Mills sends by email to the claimant: a slightly revised copy of the chronology contained in the October hearing bundle; a copy of the case management agenda; and a copy of the respondent's written representations on limitation for today.

2. Today by 10am the claimant had not attended the hearing. I directed our clerk to make a telephone enquiry to which there was no response. Ms Mills has clarified today that she has had no contact from the claimant in response to her email in preparation for today or which can assist with the reasons for his non attendance on this second occasion. There has also been a check of the Tribunal's email inbox and there is no communication, no explanation, and no medical evidence to help me (which is not uncommon on a first occasion of non attendance, but might have been reasonably expected in all of the circumstances below, save the first).

3. There are several possible explanations:

- 3.1. The claimant has experienced some unforeseen life event to affect attendance;
- 3.2. The claimant is unwell;
- 3.3. He is affected by caring responsibilities;
- 3.4. He does not actively pursue his claim.

4. Of the above, taking into account the claimant's correspondence and representations to date, including that he understands postponements supported by medical evidence can be considered, I cannot say that any of the above explanations are more likely than the other. In reality I cannot know the reason for sure. I can, however, proceed on the basis that it is one of, or a combination of the above.

5. The possible judicial decisions today are:

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- 5.1. Consideration of strike out of the claims on a future occasion having sought an explanation for today's non attendance as was done on the last occasion;
 - 5.2. An unless order for dismissal on a future date, in default of a just explanation for today's non attendance;
 - 5.3. Proceeding with today's hearing and determining the limitation issues in the claimant's absence;
 - 5.4. Dismissal today, pursuant to Rule 47 only (that is without determining the limitation issues);
 - 5.5. Postponement of my own motion.
6. The non attendance of a party puts both other parties and the Tribunal to wasted costs and expense, and deprives other Tribunal users of those resources both judicial and administrative. Currently there is strain on those resources as a result of increased workload with no prospect of that reducing.
7. Options 1, 2 and 5 are not prejudicial to the claimant, provided there is proven a just explanation for today's non attendance; but they put the respondent and the Tribunal to ongoing cost simply by the proceedings being undisposed and they delay the determination of the limitation issues and, if the case proceeds, the substantive issues.
8. Option 3 would involve considerable time today, which may well be wasted, and the claimant would not have had an opportunity to advocate his limitation case.
9. Option 4 wastes little time and cost but deprives the claimant of pursuing his claim. Option 5 takes the case no further forward in circumstances where the alleged discriminatory events are stale. We are now 2020 and the dismissal and relevant matters date back to October 2018. Ordinarily this case would have been determined by mid 2019 in this region.
10. I exercise my discretion to dismiss pursuant to rule 47 today (Option 4). I include in my consideration that the claimant has appeared to undertake duties in connection with support of his mother and the administration of his father's estate, despite being unwell. I understand that dealing with his own case, and choosing to actively pursue, may bring different strains on his already strained mental health, but fairness to the respondent and all other tribunal users requires a balance to be struck. On this occasion the right balance lies in bringing these proceedings to an end for non attendance.

Dated: 14 January 2020

Employment Judge JM Wade