



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Hughes  
**Respondent:** Heheals Pharmaceutical Services Ltd  
**Heard at:** East London Hearing Centre  
**On:** 22 July 2022  
**Before:** Employment Judge Muir Wilson

## Representation

**Claimant:** Did not attend  
**Respondent:** Did not attend

# RESERVED JUDGMENT

The judgment of the Employment Tribunal is that the claim is dismissed under Rule 47 of the Employment Tribunal Rules 2013 because the Claimant has failed without a good excuse to attend the Final Hearing.

# REASONS

## Background

1. The Claimant was employed by the Respondent, a healthcare provider, as a carer. By a claim form presented on 1 November 2021, the Claimant claimed unfair (constructive) dismissal.
2. The Respondent lodged its ET3 on 9 December 2021, resisting the Claimant's claim.
3. The case was originally listed for a one-day hearing on 26 April 2022. The Tribunal sent a letter dated 22 December 2021 by email to the Claimant and Respondent via email. This letter contained the details of the hearing date and included standard case management orders.

4. On 1 April 2022 the Tribunal wrote to the Claimant and Respondent by email, asking parties to confirm by 15 April 2022 they were ready to proceed with the hearing on 26 April 2022 and to confirm compliance with the orders set out in the Tribunal's letter of 22 December 2021.
5. On 3 April 2022 the Respondent contacted the Tribunal by email, in reply to the Tribunal's letter of 1 April 2022. The Respondent did not copy in the Claimant, but the Tribunal sent a copy of this email to the Claimant copying in the Respondent on the same day. The Respondent stated it had not received correspondence from the Claimant as required in the previous orders. It was said the Respondent had supplied the Claimant with information but remained unsure of the details of claim.
6. On 14 April 2022 the Respondent again contacted the Tribunal by email asking for a case management order and referring to a "*wasted case order*". It said this was necessary due to the failure by the Claimant to comply with the orders for preparation of the case. The Claimant was not copied into the email.
7. On 21 April 2022 the Tribunal sent a Strike Out Warning under Rule 37 of the Employment Tribunals Rules of Procedure 2013 to the Claimant by email. Employment Judge Moor warned the Claimant the Tribunal was considering striking out the claim as the Claimant did not appear to be actively pursuing their case. In particular she was failing to comply with the Tribunal's Orders set out in its letter of 22 December 2021 and failing to respond to the Tribunal's letter of 1 April 2022. The Claimant was informed that if she wanted to object to her claim being struck out she needed to give her reasons in writing by email and copied to the Respondent by 22 April 2022; also confirming whether she was ready for the hearing on 26 April 2022 and ensuring her compliance with the orders of the 22 December 2021 letter.
8. On 25 April 2022 (timed at 11.20am) the Claimant emailed the Tribunal; she did not copy in the Respondent. She said she was having trouble opening emails from the Tribunal on her device and was in an area with a poor signal. She said her mother had recently died and the funeral was on 29 April 2022. The Claimant said she needed some time to get herself together. On the same day in an email timed at 12.30 the Claimant sent an email to a different Tribunal center attaching a copy of her mother's death certificate. The Claimant said she wished to continue with her case but wanted to request the hearing was rescheduled due to her circumstances. She also said she had received very limited correspondence from the Tribunal and had difficulty opening emails on her device. The Claimant said she worked for 48 hours in an area with a poor signal. No further detail on this was provided.
9. On 25 April 2022 the Tribunal wrote to the Claimant and Respondent by email acknowledging the correspondence from the Claimant and attaching copies for the parties. Acting Regional Employment Judge Russell indicated she was minded to postpone the final hearing on 26 April 2022 until 22 July 2022. Proposed case management orders and dates were shared with the parties.

10. The Respondent replied the same day objecting to a postponement. The Respondent requested the hearing on 26 April 2022 was changed to a preliminary hearing. The Respondent said this was required as it needed to find out "*what we are being accused of*". The Respondent said it would accept the postponement if it knew this.
11. In light of this correspondence, Acting Regional Employment Judge Russell sent out a Case Management Order on 25 April 2022 to both parties by email. In this it was ordered that the Final Hearing listed for 26 April 2022 was converted to a Preliminary Hearing (Case Management) by telephone.
12. On 26 April 2022 the Preliminary Hearing took place and was heard by Employment Judge Dias-Patel. The Claimant did not attend, the Respondent attended. The Claimant had emailed the Tribunal Office to ask the Preliminary Hearing take place the following week. The Tribunal did not adjourn but made orders in order to progress the case to a Final Hearing. Parties were reminded to read the orders with care as they contained key dates. These dates were in bold type and underlined in the Hearing Record.
13. The Record contained the warning that if orders were not complied with the Tribunal may exercise its powers to strike out all or part of the claim or response.
14. The Record set out that, at the Hearing, the Respondent had invited the Tribunal to consider whether to make a deposit order under Rule 39 of the Rules. The Tribunal considered it was arguable that the Claim had little prospect of success, and the Tribunal set out more information on this. That said, the Tribunal concluded the Claimant should be afforded the opportunity to better articulate her claim, before an application for a deposit order would be considered.
15. The Record noted that a Final Hearing would take place on 22 July 2022 at 10am in the form of a video hearing. Case management orders then followed in respect of the claim, issues, schedule of loss, witnesses and documents (including statements and an agreed bundle) and dates for completion. Parties were also ordered to write to the Tribunal by 11 July 2022 to confirm readiness or provide information if not ready. The Record contains a warning in respect of non-compliance.
16. There is an email confirming the Record of the Preliminary Hearing was sent to the Claimant and Respondent on 16 May 2022 by email.
17. On 19 May 2022 the Tribunal service wrote to the Claimant and Respondent by email with a Notice of hearing by video hearing. This set out in two sections the hearing date of 22 July 2022 and a start time of 10am and provided instructions for the parties to join the hearing.
18. On 30 May 2022 the Respondent contacted the Tribunal service by email, the Claimant was copied into this correspondence. The Respondent indicated they had received no information from the Claimant and this was a failure to comply with the order to send a schedule of loss and case summary by 27 May 2022. The Respondent noted it was due to send information on 10 June 2022 in compliance with the case management orders but did not have the information it required to understand the issues.

19. On 7 June 2022 the Tribunal service wrote to the parties by email asking the parties to confirm on or before 21 June 2022 their readiness to proceed with the hearing on 22 July 2022.
20. The Respondent replied by email on 7 June 2022 (the Claimant was copied into this email). The Respondent repeated the information sent on 30 May 2022 and asked for advice, noting the Record from the Preliminary Hearing referred to consideration of striking out.
21. On 10 June 2022 the Claimant sent an email to the Tribunal and the Respondent. This attached a handwritten document entitled 'Schedule of Loss'.

## **Hearing**

22. By 22 July 2022, nothing had been received from either party to add to the Tribunal file since 10 June 2022. No statements, bundles, or list of issues have been provided at any stage by either party.
23. Just before 10am on 22 July 2022, I joined the video hearing room to start the Final Hearing. I remained in this room until 12.45pm. Neither party joined or attempted to join the hearing. The Tribunal Clerk attempted to contact the parties at around 10.15am.
24. I was informed by the Tribunal Clerk he had contacted the Claimant by phone. She said she had not been informed of today's hearing and was unable to attend. The Tribunal Clerk told me the Claimant said she had not received contact from the Tribunal and did not know about the date. She apparently referred to intending to visit a third-party later that day to ask them to look at her email inbox to look for any emails from the Tribunal. I was told the Claimant also informed the Tribunal Clerk she had not been in a good place with her mental health due to her family bereavement.
25. The Tribunal Clerk also spoke to a person at the Respondent business who said they were responsible for Human Resources. The Tribunal Clerk said this person indicated they had no knowledge of today's hearing date. This person said the main individual from the Respondent who has sent and received all the emails with the Tribunal, usually forwards all emails about this matter; this person told the Tribunal Clerk they had no knowledge of today's hearing and were unable to attend.
26. I went through the Tribunal file to review the email addresses used for the Claimant and Respondent. The same email address has been used for each party in communications from the Tribunal since the Claim was first received. The Claimant and Respondent have been using these same respective email addresses throughout in their communications with the Tribunal. I also asked that the Tribunal system be checked again for any further correspondence from the Claimant and/ or Respondent. There was none.
27. At 15.30 on 22 July 2022, I was still at in the Tribunal building. The Tribunal Clerk informed me he had spoken to the Claimant on the phone. She said she still wanted her Claim to proceed but had not known about today's date and wanted the Tribunal to contact her in writing using the postal service from now on.

## Conclusions

28. Rule 47 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.’

29. I had regard to the Court of Appeal case of *Roberts v Skelmersdale College* [2004] IRLR 69. Although it was decided under the old rules, there is sufficient similarity between the two rules that it remains good law. The following principles emerge (so far as they apply to the current rule 47):

- the rule confers a very wide discretion;
- the rule does not impose on an employment tribunal a duty of its own motion to investigate the case before it, nor to satisfy itself that on the merits the Respondent has established a good defence to the claim of the absent employee;
- the Tribunal has a discretion to require the employer to give evidence, but no duty to do so;
- before making a decision the Tribunal shall have regard to the information required under the rule.

30. I considered the information available. I had in mind the guidance in *Roberts* that there is no obligation on the Tribunal to conduct its own investigation into a case where a party fails to attend. However, I also had regard to the information available to me from the claim form, response, and Tribunal correspondence with the parties.

31. In reviewing the information available on the Tribunal file, I identified the Tribunal had been provided with some material from ACAS by the Respondent. This is not information I ought to consider or take into account. I put it to one side and it did not play any role in my considerations or thinking.

32. The Claimant’s account in her ET1 is scant and lacks basic information as to the basic grounds of her Claim. It is not even clear what is the alleged breach of contract on which the Claimant relies. Although it might be inferred that it is a breach of the implied term of trust and confidence, that is not expressly stated in the material before me.

33. There is no further information provided by the Claimant in respect of her Claim itself apart from her email to the Tribunal in November 2021 informing the Tribunal of her dates of employment and her email in June 2022

containing the document entitled Schedule of loss. In its ET3 the Respondent attached emails from the Claimant to the Respondent from August 2021, which include references to the Claimant resigning from her employment.

34. Crucially here, if it is treated as a constructive dismissal claim, the initial burden of proof rests on the Claimant. Unlike the *Roberts* case, which was a case of direct dismissal in which it might have been possible (although the Court of Appeal found in no sense mandatory) for the Tribunal to make findings as to the reason for, and fairness of, the dismissal in the claimant's absence, that is not the case here. It is for the Claimant to prove that there was a repudiatory breach of contract and for her to prove that she resigned in response to it. Plainly, the reason for the Claimant's resignation is a matter that could only properly be determined having heard evidence from her.
35. Since the Claim was first lodged with the Tribunal, there have been repeated failures to comply with case management orders by the Claimant. Whilst the Respondent has also failed to comply with some such orders, the Respondent has made some contact with the Tribunal on various dates (as above) in respect of case progression.
36. I have seen the Claimant suffered a close family bereavement in April 2022 and understand she told the Tribunal Clerk today that she had been impacted by her loss. But balanced against this, the Claimant has not made contact with the Tribunal since informing the Tribunal of the death in her family, save for the document sent in June 2022. No request was made to postpone today's date or any medical information provided.
37. I considered what I was told through the Tribunal Clerk, that neither party were aware of today's date. I did not find this persuasive. There were a number of communications sent out by the Tribunal to parties confirming today's hearing date. I am satisfied these communications were sent to the email addresses being actively used by each party in respect of this claim with the Tribunal. The Respondent was also informed of today's date directly at the Preliminary hearing it attended.
38. There have been specific warnings provided during the history of this claim to the Claimant due to apparently not pursuing the claim or complying with tribunal orders.
39. The position today was that there has been no substantive evidence provided by the Claimant in respect of her Claim such as to enable me to understand or evaluate the Claim. The lack of information from the Respondent and its failure to comply with directions might, at least in part, be fairly explained by the absence of information from the Claimant. However, this lack of evidence on both sides meant that even if it would have been in the interests of justice, I was not in a position to proceed with any consideration of the claim in the absence of the parties.

40. Here I did not find it credible that either party was not aware of today's fixed date for the hearing, based on the email history involving the parties. I have reflected on the Claimant's communication with the Tribunal Clerk at around 15.30 that she wants her claim to continue and her request for communications by post in the future.
41. The Final Hearing was due to commence at 10am today. I consider the Claimant had been sufficiently informed of this hearing.
42. Considering the historic non-compliance, the failures by parties to attend today and the failure by the Claimant to engage with her claim and the Tribunal, I do not consider I ought to postpone the hearing, nor am I persuaded any further case management orders would enable the case to progress.
43. I had regard to the fact that the dismissal of a case under rule 47 is a severe sanction. I considered whether it would be right, as an alternative, to adjourn the hearing to another occasion. I decided that it, in the circumstances, it would not be right to do so. If the case were relisted, given the current caseload being dealt with by the Tribunal, it would be many months before it could come on for hearing. The delay would be inherently undesirable in a case where events are already historic.
44. I also had regard to Tribunal resources. There is huge demand for hearings in this region.
45. In all the circumstances, I dismiss the Claimant's case under rule 47, because she has not attended nor been represented at this hearing.

**Employment Judge Muir Wilson**  
**Date: 14 August 2022**