EMPLOYMENT TRIBUNALS

Claimant: Ms T Brangman

Respondent: Jewel Home Support Ltd

Heard at: Manchester **On:** 10 October 2022

Before: Employment Judge Slater

Representation
Claimant: Did not attend
Respondent: Mr A Timol, solicitor

JUDGMENT

The claim is dismissed, pursuant to rule 47 of the Employment Tribunals (Rules of Procedure) 2013, because of the failure of the claimant to attend the hearing.

REASONS

Introduction

1. This was a public preliminary hearing listed to consider the following issues:

(1) In relation to complaints brought under Equality Act 2010, whether the claimant can show that it would be just and equitable for the Tribunal to allow a longer period for the claim to be brought, that period extending to the date of presentation of the claim on 21 September 2021;

(2) In relation to complaints brought under the Employment Rights Act 1996 and/or the Working Time Regulations 1998, whether the claimant can show that it was not reasonably practicable for her complaint to have been presented within time, and if so whether it was presented within such further period that the Tribunal considers reasonable.

(3) The respondent's application for costs if there was sufficient time.

2. The parties were notified of the date of the hearing and the issues to be dealt with by a letter from the Tribunal dated 17 August 2022.

3. At this hearing, I made an order amending the name of the respondent from "Jewel Home Support (Preston)" to "Jewel Home Support Ltd".

Background to this preliminary hearing.

4. The claimant presented her claim on 21 September 2021. She ticked the boxes on the claim form to say she was claiming race discrimination, sex discrimination, holiday pay, arrears of pay and "other payments". She also ticked the box to say she was making another type of claim which the Employment Tribunal can deal with, which she described as "indirect and direct discrimination."

5. Early conciliation with ACAS took place in the period 20-21 September 2021.

6. By a letter from the Tribunal dated 7 October 2021, the claimant was ordered to provide a full account of facts alleged to be unlawful conduct, identifying the type of claim, by 4 November 2021. The claimant, in response to this order, sent on 23 October 2021 to the Tribunal, but not the respondent, a "Schedule of Less Favourable Treatment". This set out in a table a chronological list of matters about which the claimant complained. The last date given was 15 December 2020. The claimant did not, in relation to each complaint, identify what type of complaint it was. At the end of the schedule, she wrote that her claims were as follows: "indirect and direct discrimination – race and sex discrimination; breach to contract; victimisation; harassment; retaliation; equal pay; modern slavery; breach to human rights; breach to General Data Protection Regulation 2018".

7. The claimant's Schedule of Less Favourable Treatment was sent by the Tribunal to the respondent on 11 November 2021.

8. The respondent was not required to present a response to the claim until 28 days from receipt of the further information from the claimant. By a letter dated 8 December 2021, the parties were informed that Regional Employment Judge Franey had extended time for a response, which now expired 14 days after the date of that letter i.e. 23 December 2021. The respondent presented its response on 17 December 2021.

9. By a letter dated 20 November 2021, the claimant made the first of a number of applications for judgment in default.

10. By a letter from the Tribunal dated 17 February 2022, the claimant was informed that the response form was filed within time extended by the Tribunal's letter of 8 December 2021 and was accepted. The claim was contested and judgment under rule 21 was not appropriate. The parties were also informed in that letter that it appeared from the Schedule of Less Favourable Treatment that the course of treatment about which the claimant complained appeared to end at the end of 2020, or arguably early in 2021, when the claimant alleged her grievance was not properly addressed. On REJ Franey's directions, the parties were informed that there would be a public preliminary hearing to decide the following issues:

> "In relation to complaints brought under the Equality Act 2010, whether the claimant can show that it would be just and equitable for the Tribunal to

> allow a longer period for the claim to be brought, that period extending to the date of presentation of the claim on 21 September 2021;
>
> "In relation to complaints brought under the Employment Rights Act 1996 and/or the Working Time Regulations 1998, whether the claimant can show that it was not reasonably practicable for her complaint to have been presented within time, and if so whether it was presented within a further period that the Tribunal considers reasonable."

11. The claimant was ordered to provide to the Tribunal and the respondent within 21 days of the date of this letter, a witness statement addressing the question of time limits, providing an explanation for the passage of time between December 2020 and September 2021, accompanied by copies of all documents on which the claimant relies to explain why the claim was not lodged any earlier during that period.

12. In a letter dated 28 February 2022, the claimant asserted that her application to the Tribunal was made in time as she was still employed by the respondent.

13. The parties were sent a notice of hearing on 6 April 2022 listing a preliminary hearing for 9 May 2022. The hearing was listed to take place in person. The notice of hearing stated that the hearing would determine:

> "The question of when employment ceased, when the matters complained of occurred, time limits, and whether the employment tribunal has jurisdiction to consider the claim."

14. A separate letter of the same date included reference to the order for the claimant to provide a witness statement in relation to the time issues, and noted that the claimant had yet to comply and must do so within the following 14 days.

15. On 15 April 2022, the claimant sent the Tribunal a further copy of a witness statement which she had previously sent to the Tribunal. This statement does not address the claimant's reasons for not presenting the claim in time.

16. The claimant requested, by email of 5 May 2022, that the hearing on 9 May should take place by video link. The request was refused by REJ Franey. The claimant made further applications by email on the morning of 9 May 2022 to convert the hearing to a hybrid hearing, where she would attend remotely by video link. The respondent attended the hearing in person on 9 May 2022. The claimant did not attend. Employment Judge Ross refused the claimant's application to convert the hearing to a hybrid hearing, for reasons which the judge has given in writing. The judge directed that the preliminary hearing in relation to time limits would take place in person on 8 August 2022.

17. The respondent subsequently successfully applied to postpone the hearing listed for 8 August 2022 due to the departure of the person who had been dealing with the case at the respondent's representative's firm. The preliminary hearing was re-listed for today, 10 October 2022. The parties were notified of the date of the hearing and the issues to be dealt with by a letter from the Tribunal dated 17 August 2022. These issues were those I have set out in the introduction to these reasons.

18. The claimant, in a number of letters, made applications for what she described as a default judgment. Employment Judge Ross noted in her written reasons for her decisions made on 9 May 2022 that the claimant, in one of her emails applying for the hearing on 9 May 2022 to be a hybrid hearing, had included the statement: "…the case is appropriate for a default hearing based on evidence at a point of law in accordance with rule 21". Employment Judge Ross noted, in paragraph 9 of her reasons, that the claimant had been informed by the Employment Tribunal on numerous occasions that her application for a default judgment was unsuccessful and her application for a reconsideration of the refusal to issue a default judgment was also unsuccessful. The judge also recorded that the claimant had been advised by 25 April 2022 that further applications for a default judgment were misconceived and would not be entertained again.

19. Following this judgment, the claimant wrote again, on a number of occasions, repeating her request for a default judgment and was informed by the Tribunal that her requests were refused for the reasons first set out in the Tribunal's letter of 17 February 2022. By a letter from the Tribunal dated 26 September 2022, the claimant was informed that REJ Franey directed that the repeated applications for a default judgment were unreasonable, the point had been addressed in February 2022 and the Tribunal would not respond to any further applications on this point.

The claimant's non-attendance at this hearing

20. The claimant sent an email to the Tribunal and the respondent on Friday 7 October 2022 at 17.29. She wrote:

> "I am responding to the respondents email today. There is no hearing listed for the 10th of October 2022 as there is no requirement for a hearing. Also, the claimant was not informed of change of representative as Martin Broomhead was representing but has left the firm.
>
> "The case is appropriate for Default Judgement due to the fact that the respondent did not respond or contest the claims which is a breach to the Tribunal Rules of Procedure.
>
> "Therefore, Default Judgement applies and no further consideration shall be permitted for a response from the respondent. I object to any application from the respondent.
>
> "The claimant has complied with all rules and has directed all errors and concerns by the representative and Tribunal to the Judge for correction in which the Tribunal have failed to correct for a fair and lawful Tribunal without hearing.
>
> "Please refer to a Judge as the claimant is applicable for remedy in compliance with the Tribunal Rules of Procedure, Employment Law and Human Right's."

21. The claimant did not attend the hearing.

22. Since the claimant clearly had notice of the hearing and had, in effect, given reasons for not attending the hearing in her email of 7 October 2022, I decided it was not appropriate to contact the claimant before proceeding with the hearing.

Law

23. 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. 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."

Conclusions

24. The claimant has been informed on many occasions prior to this hearing of the reasons why a judgment under rule 21 (which she refers to as a default judgment) will not be made. The relevant circumstances have not changed. The claimant could not reasonably expect that a rule 21 judgment would be issued so this hearing would not take place. The claimant has given no reason why she would not be able to attend and has not asked the Tribunal to consider any written representations in her absence. The claimant has given no good reason for not attending the hearing.

25. The witness statement the claimant sent to the Tribunal does not deal with the time limit issue which this hearing was to address. Had the claimant attended, I would have clarified her complaints and then, if it was confirmed that her complaints were presented out of time, given her an opportunity to explain why she did not present her claims in time.

26. This is the second time the claimant has failed to attend a hearing, the first being the hearing on 9 May 2022. On both occasions, the respondent has attended.

27. I do not consider it would be in the interests of justice to postpone this hearing a further time, when the claimant knew about the hearing and has given no good reason for not attending.

28. In these circumstances, I consider it appropriate to dismiss the claim because of the claimant's failure to attend the hearing.

Costs

29. The respondent had, in correspondence prior to this hearing, made an application for costs in respect of the claimant's failure to attend the May 2022 hearing. The application did not set out the basis for that application in any further detail or provide details of costs sought. The parties were informed in correspondence before this hearing that the costs application would be dealt with at this hearing, if there was time to do so.

30. Since the respondent had not made their application in detail in writing before the hearing and since the claimant was not able to respond to any oral application because she had not attended, I did not consider it appropriate to deal with the costs application at this hearing. I informed the respondent that, if they wished to pursue a costs application, this should be made in writing within 14 days of the written judgment being sent to the parties. I have shortened the 28 day time limit set out in rule 77 of the 2013 Rules of Procedure.

Employment Judge Slater
Date: 10 October 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
13 October 2022

FOR THE TRIBUNAL OFFICE