



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Edwards

**Respondent:** National Utilities Ltd

**Heard at:** Croydon Employment Tribunal - hybrid  
**On:** 20 September 2022

**Before:** Employment Judge Nash  
Mr W Dixon  
Ms J Forecast

## Representation

**Claimant:** Did not attend  
**Respondent:** Mr Stewart of counsel

# JUDGMENT

The claimant's application to postpone the final merits hearing starting on 20 September 2022 is granted.

# REASONS

1. The claimant applied to postpone the final merits hearing listed for 20 and 21 September 2022 by way of an email of 19 September at 20.48h, as follows,  
"My partner has tested positive for covid and I am now experiencing symptoms. I am diabetic so am a vulnerable person so can not get on the train tomorrow from Leeds to come to London. Can I ask the court for another date please as due to c symptoms I will not be able to attend."
2. The application was not copied to the respondent. There were no attachments including any medical evidence.
3. The tribunal converted the in person hearing into a hybrid hearing, because the claimant had stated on his ET1 that he was willing and able to participate in a video

- hearing, starting at 11am. The hearing would either proceed as a full merits hearing or consider the claimant's application to postpone.
4. Having been telephoned by the tribunal, the claimant informed the tribunal that he was too ill to proceed and wanted to postpone. The Tribunal informed the claimant that it would consider his application at 11am taking into account any representations from the respondent. The claimant was not required to attend. If he wished to attend, the hearing would be short and the tribunal would make allowances and adjustments for his state of health to assist him to attend. The claimant did not reply. The tribunal invited the claimant to make any further representations in writing by 11.30am but he did not do so.
  5. The respondent objected to the application. It contended that the application was not made bona fide. The claimant had failed to comply with orders to particularise his s13 ERA claim and no witness statement had been provided. He was in effect attempting to avoid the matter being determined. The Claim should be struck out, although the respondent accepted that the tribunal could not consider that today.
  6. In making its decision the tribunal took into account the Presidential guidance and the over-riding objective. Under Rule 30A as the application was made within 7 days of the hearing and the respondent did not consent, the tribunal could only grant a postponement in exceptional circumstances.
  7. The tribunal must balance both parties' common law rights to a fair trial and their article 6 rights. The tribunal considered the claimant's right to participate in a fair hearing and the respondent's right to a hearing within a reasonable time and the public interest in avoiding delay.
  8. The tribunal had regard to the cases of *Teinaz v London Borough of Wandsworth 2002 ICR 1471, CA*, and *Andreou v Lord Chancellor's Department 2002 IRLR 728, CA*, as to when ill health may be good grounds for a postponement. It also had regard to the reminder in *O'Cathail v Transport for London 2013 ICR 614, CA*, that it should be as fair as possible to both sides.
  9. The events material to this claim occurred in late 2020 and early 2021. Currently in September 2022 it is over a year and half later. If postponed this matter is likely to come on again no later than the first half of 2023. This is a material delay. However, the risk of damage to evidence is mitigated as the evidential matters do not appear complex.
  10. The Claimant had without explanation failed to comply with the presidential guidance. He did not copy his application to the respondent. He failed to provide any medical evidence – there appeared no reason why evidence of the partner's covid status was not provided at least. There was no reference to the over-riding objective. The tribunal reminded itself that the claimant was not represented.
  11. Applying the case law, and balancing the parties' article 6 rights, although the claimant failed to comply with the Guidance, to proceed in his absence would risk an impermissible interference with his art 6 rights. This was compared to a materially lesser interference with the respondent's article 6 rights.

12. On the basis of the claimant's self-reported medical condition making him unable to attend for ill health reasons, the postponement was granted.
13. Nevertheless, the tribunal shared the respondent's concern at the claimant's failings to comply without explanation with previous tribunal orders, which appeared to risk the tribunal's ability to hear the case, even without the last minute postponement. The tribunal will permit the claimant a short period to make good his failings. The Tribunal accordingly made the following Orders.

## **ORDERS**

14. Two weeks from the date this order is sent to the claimant he shall:-
  - a. Provide medical evidence showing why he was unable to attend a remote video hearing on 20 and 21 September 2022;
  - b. Provide a written witness statement;
  - c. Comply in full with paragraph 8 of the order of EJ Ferguson. This information must be provided in table form.
15. The respondent has permission to amend its response going to claim as now understood and any further information from the claimant within 3 weeks of receipt of claimant's further information.
16. The tribunal hereby records that the claimant failed to comply in a number of ways with tribunal orders and the presidential guidance without explanation or excuse. If the claimant does not comply with the orders made today, it is open to the respondent to apply to strike out the claim on the papers without a further hearing on basis of his continued failure to comply with orders.
17. The hearing will be relisted for two days by cloud video platform. This will avoid the claimant who has reported a vulnerability to covid having to travel from Leeds

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Employment Judge Nash

Date 20 September 2022