

EMPLOYMENT APPEAL TRIBUNAL
52 MELVILLE STREET, EDINBURGH, EH3 7HF

At the Tribunal
On 27 February 2015

Before

THE HONOURABLE LADY STACEY

(SITTING ALONE)

MR STEVEN RAYMOND CARR

APPELLANT

ARTHUR McKAY BUILDING SERVICES

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

Neither present nor represented

For the Respondent

Neither present nor represented

SUMMARY

Appeal against order for payment of £99 in respect of time spent by the respondent in preparing for a hearing about a postponement, required by the claimant because his witness did not attend. Held that the EJ did not err in law in making the order. She explained in sufficient detail that the hearing was needed because the claimant had failed without excuse to arrange for the presence of the witness. Appeal dismissed.

THE HONOURABLE LADY STACEY

Introduction

1. This is a Full Hearing in the case of Mr Steven Carr against Arthur McKay Building Services. I will refer to the parties as Claimant and Respondent, as they were in the Tribunal below. The Decision which Mr Carr seeks to appeal against was made by Employment Judge Porter sitting alone in Edinburgh in August 2013, and her Judgment was notified to parties on 15 August 2013. Mr Carr has sent an e-mail to the EAT today, 27 February 2015, stating that he is unable to attend due to ill health. He does not expand on the nature of his ill health and he does not seek an adjournment. He sets out written submissions in his e-mail in which he makes it clear that he expects the case to be decided today on the basis of his written submissions. I have therefore considered all that he has written.

The Background

2. The history of this matter is that the appeal was allowed by me to proceed at a hearing under Rule 3(10) on a very restricted basis only. That basis was set out in my Written Reasons, and it relates only to the order for payment of costs made by Employment Judge Porter in which I was concerned to consider whether or not there was sufficient in her Written Reasons to explain why she made an order against Mr Carr for payment of £99. I note that Mr Carr's written submissions concern his allegations of criminality and do not deal with the Written Reasons at all. He is concerned to make points that I specifically said in the Judgment in the hearing under Rule 3(10) may not go ahead. Therefore I have considered, in the absence of Mr Carr and indeed in the absence of the Respondent, who has indicated in writing that it does not oppose this appeal, whether or not Judge Porter has given sufficient reasoning in her written Judgment for her order. I have come to the view that she has done so.

The Employment Tribunal Decision

3. In the second paragraph of her Written Reasons she states as follows:-

“2. On the 24th January 2013 the hearing could not proceed as the claimant’s GP, Dr Steven Sayers (whom the claimant wished to call as a witness) was not present. The reason for Dr Sayers’ non attendance was the failure of the claimant to advise him of the continued hearing date, a Witness Order having been granted for the earlier hearing dates in this case.

3. On the 23rd January 2013 the claimant applied for a postponement of the hearing on the 24th January 2013. That application was opposed and refused. He renewed his request for a postponement in the morning of the hearing on the 24th January 2013. After allowing the respondents time to consider their position and prepare their objections to this motion, the parties were heard and the postponement granted.”

4. It was submitted before Employment Judge Porter that the Claimant was fully aware of his responsibility to ensure that his witnesses or his witness was available to attend and that he had not taken all reasonable steps to ensure that that happened. The Claimant did not make any submission before Employment Judge Porter to explain why he had not taken further steps to have his GP attend.

5. In her Written Reasons, starting at paragraph 18, Employment Judge Porter gives her decision. She notes that the Respondent advised that they had spent a total of three hours in preparation time for the opposition they made to the Claimant’s requests on 23 and 24 January for a postponement. Employment Judge Porter considered that three hours was a reasonable and proportionate amount of time to spend on preparatory work, having regard to the history of the proceedings. She found at paragraph 21 that the sum of £99 should be awarded in respect of the three hours’ preparation time.

Conclusions

6. While the Employment Judge does not set out at that part of her Written Reasons any particular reason why the Claimant should make payment of that, I have decided that, reading

her Reasons as a whole, it is quite clear that the Employment Judge has taken the view that the Claimant should make payment because he has acted unreasonably in the way in which he has conducted the proceedings. This is because he was well aware that it was for him to ensure that a witness that he wanted to lead was present and he failed to do that. While I am still of the view that the Employment Judge could perhaps have set that out more clearly, I do take the view that, reading her Judgment as a whole, it is sufficiently clear that that is her position. Nothing was argued before her by the Claimant to dissuade her from that. Nothing has been argued by the Claimant in his written submissions today to indicate that the Employment Judge made any error of law in coming to that view.

7. In these circumstances, then, despite the fact that the Respondent does not oppose this appeal, I am not prepared to grant it because I am not of the view that the Employment Judge has made any error of law. The appeal is accordingly dismissed.