



EMPLOYMENT TRIBUNALS

Claimant: Mr C Pinchin
Respondent: GT & A Tuby Limited

Heard at: Hull **On:** 4th January 2018
Before: Employment Judge Lancaster

Representation

Claimant: Did not attend
Respondent: Mr GT Tuby and Mrs Samantha Buckle

JUDGMENT AT A PRELIMINARY HEARING

1. The Respondent's application for an extension of time for presenting the Response is granted. The ET3 submitted on 31st October 2017 is accepted.
2. The Claimant did not have the necessary 2 year's continuous employment and the complaints of unfair dismissal and failure to provide written reasons for dismissal are struck out.
3. The remaining complaints of failure to pay for accrued holiday and of breach of contract (wrongful dismissal without notice) are dismissed upon the Claimant's non attendance.

REASONS

1. This date, 4th January 2018, had initially been allocated for the final hearing of this claim at Hull. Notice of listing for this substituted preliminary hearing was sent on 29th November 2017 at the same time as an Order which mistakenly referred to the venue being at Leeds. Clarification that the hearing was to be at Hull was sent on 21st December 2017. The Claimant's solicitor wrote to come off the record on 19th December 2017: this was acknowledged on 29th December 2017. The Claimant did not attend this listed hearing either at Hull or at Leeds. Nor did he seek to make any contact with the Tribunal. All the indications are therefore that this case is no longer being actively pursued.
2. The Response was due on 11th October 2017. I accept the Respondent's assertion that, for some unknown reason, the claim was not in fact received. On 25th October 2017 the Tribunal wrote to the Claimant and this letter was copied to the Respondent. I

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accept that this was the first communication actually received. The Respondent immediately telephoned the Tribunal on 26th October 2017. On 27th October 2017 the Tribunal wrote to the Respondent explaining the procedure for applying for an extension of time. That application was made within a draft ET3 then submitted on 31st October 2017. There is clearly a good arguable defence to these claims. In the circumstances it is right to extend time by 20 days so as to allow the Respondent to defend the case.

3. At this preliminary hearing the Respondent has produced irrefutable documentary evidence that prior to his dismissal on 27th July 2017 the Claimant had only worked from 3rd April 2017. He had previously worked for the Respondent between 5th March 2016 and 30th June 2016, when he was sacked, and again from 2nd August 2016 until 16th September 2016. On both occasions that his employment terminated in 2016 he was issued with a P45. There are clearly therefore substantial breaks in the continuity of employment which mean that the Claimant does not have the required 2 years' continuous service needed to bring a claim of unfair dismissal (or the related claim of failure to provide written reasons on request - though I note that the Respondent's letter of 30th August 2017 does give a reason, namely unauthorised absence without notification). Because I have more than sufficient information before me to enable this issue to be determined I have decided therefore to proceed with the hearing and make this finding of fact, in accordance with rule 47 of the Employment Tribunals Rules 2013
4. That leaves substantive complaints of wrongful dismissal (termination without the required notice, which would in fact have been only 1 week) and non payment of accrued holiday at termination. It was intended that these matters be subject to further case management directions: they were not listed for final determination at this hearing. I have decided that it is not appropriate to convert this hearing (under rule 48 of the Employment Tribunals Rules 2013) into a final hearing and to proceed in the absence of the Claimant, hearing one side of the story only.
5. However, taking into account the matters set out in paragraph 1 above, because there can be no further identification of any possible issues and nor, therefore, can any meaningful additional directions be given the remaining claims are dismissed in any event pursuant to rule 47 for non-attendance on the part of the Claimant.

EMPLOYMENT JUDGE LANCASTER

DATE 4th January 2018