



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs N Robinson**

**v**

**Sunflower Care Homes**

**Heard at:** Cambridge

**On:** 6 February 2018

**Before:** Employment Judge GP Sigsworth

## **Appearances**

**For the Claimant:** Not in attendance and not represented

**For the Respondent:** Ms C Urquhart, counsel

## **JUDGMENT**

The Judgment of the Tribunal is that:

1. The Claimant's claim is struck out.
2. The Claimant is ordered to pay to the Respondent costs in the total sum of £600.00.

## **REASONS**

1. The Claimant's claim is for unauthorised deductions from wages – underpayment of the national minimum wage. On the face of it, the claim is out of time. The last underpayment relied upon was on 25 February 2017. The Claimant then went on maternity leave and did not return to work before her resignation on 13 November 2017. The ACAS early conciliation process ran from 16 August to 16 September 2017, and the claim form was lodged with the tribunal on 22 September 2017.
2. The Claimant did not attend the hearing today, which was listed to hear and determine all issues. A notice of hearing had been sent correctly addressed to her. The Respondent told the Tribunal that they had had no recent contact with the Claimant. She has not complied with an order that she provide a schedule of loss. She has not sent to the Respondent or to the Tribunal a witness statement on the issue of jurisdiction identified above. No documents

have been disclosed by her to the Respondent. The Respondent has assumed, therefore, that she is not intending to pursue her case.

3. The Tribunal waited until after 12 noon for the Claimant to attend, as the original notice of hearing had the start time as 12 noon. A later notice of hearing, dated 25 November 2017, then changed the time to 10.00 am. However, the Claimant did not attend at 12 noon. The Tribunal administration attempted to reach her on the telephone number on the file, but the call went straight to answer phone. The Respondent then made an application to strike out the Claimant's claim, on three grounds. First, that the claim had no reasonable prospects of success as it is prima facie brought out of time – pursuant to rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013. Second, that the Claimant had failed to comply with the Tribunal order dated 5 October 2017, that she provide a schedule of loss – pursuant to rule 37(1)(c). Third, that the claim has not been actively pursued – pursuant to rule 37(1)(d).
4. The Respondent argued that the Claimant was on notice of the strike out application by reason of the Respondent's response to her claim that they were raising the out of time jurisdiction point. As there has been no defence or objection to the Respondent's application to strike out the claim, the application succeeds. The claim was undoubtedly brought out of time, and the Claimant has provided no evidence or argument that it was not reasonably practicable to bring the claim in time. Further, she has not complied with the Tribunal's order for a schedule of loss and has not attended today's hearing, thereby indicating that she is not actively pursuing her claim.
5. The Respondent wrote to the Claimant on 15 December 2017, warning her that if she pursued her out of time claim, and was unsuccessful, then a costs application will be made against her. The Respondent proposed a drop hands settlement. The Claimant did not reply to that letter. The Respondent made an application at this hearing for costs in the sum of £500.00 plus VAT, which is not even enough to cover counsel's fee for today and for the solicitor's preparation work. Again, there being no opposition to this application, and the Claimant being on notice of it, I conclude that the application for costs is successful, under rule 76 of the Rules of Procedure.

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Employment Judge GP Sigsworth

Date: 27/2/2018

Sent to the parties on: .....

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For the Tribunal Office