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## EMPLOYMENT TRIBUNALS

V

*Claimant*

*Respondent*

Ms E Benedetto

AND

IELTS Medical Ltd

### PRELIMINARY HEARING

**HELD AT:** London Central                      **ON:** 16 January 2019

**BEFORE:** Employment Judge Russell (Sitting alone)

***Representation:***

**For Claimant:** In person  
**For Respondent:** No appearance

### JUDGMENT AND REASONS

1. This hearing came before me on the afternoon of 16 January as a floating case. The Claimant was employed from 25 May 2018 to 2 August 2018 as an OCT tutor based in North London. She claimed arrears of pay and other claims relating to the Respondent's failure to pay her fully for June 2018 or at all for July 2018 and the provision of incorrect payslips and P45 which (to the Claimant's detriment because it led to Inland Revenue confusion as to her tax liability) was dated 28 rather than 2 August.

2. The Claimant appeared in person accompanied by a friend, Caroline Nolan who was also a teacher allegedly owed money by the Respondent. The Respondent did not attend but through Nonny Nze, a Director of the Respondent IELTS Medical Ltd, had filed an email request for a postponement. Such application arriving at the Employment Tribunal by email 17:18 hours on 14 January. The attachments to the email contained an application dated 11 January claiming the ET1 had not been received prior to 28 December 2018 nor had a Notice of Hearing initially been received and the

Respondent was unavailable for today's hearing though no substantive evidence was provided as to why. In addition, an ET3 was belatedly served disputing the Claimant's claim.

3. It is clear and accepted by the Respondent that they had full knowledge of the claim by 28 December 2018. The Claimant is of the view that they knew of it and the Hearing of 16 January 2019 by 12 November 2018. Although the claim was initially made against Nonny Nze herself (with the Claimant being permitted to alter that to the company employer, IELTS Medical Limited), and although the claim was served on Ms Nze's Highgate High Street address rather than the Hazelville Road one is clear that she, as a Director of the Respondent, has been fully aware of the details of the claim for some time.

4. On this basis whilst the application for a late filing of the ET3 is permitted the Respondent has acted unreasonably by filing such a late defence and by forcing the Claimant to attend today and take a day off work in doing so without attending themselves. The application to adjourn was late and unwarranted. I therefore, on the Claimant's application, award costs to the Claimant representing her time spent in preparing for the case today (when she legitimately thought it would be heard having filed her claim as long ago as 16 September 2018) and her attendance. As she is not represented this award is by way of a Preparation Time Order amounting to £570 based on 15 hours preparation and attendance at £38 per hour. Any further costs determination will be at the discretion of the Judge at the adjourned Hearing but if the Respondent ignores the case management orders below this may well be regarded as further unreasonable conduct.

5. I have, in making this cost award, applied the guidance within the case of **Yerra Kalva v Barnsley MBC (2011)** as well as by reference of the Employment Tribunal Rules of Procedure I have looked at the whole picture and consider the conduct of the Respondent in defending the case (to date) as being unreasonable throughout. I have assessed the costs above by reference to the Claimant's wasted preparation/attendance time and although I have not taken the Respondent's means into account I do not have to do so. It is clear they received the claim given it was sent to an address used by the Respondent, the Respondent has been guilty of delay and trying to obscure the true facts and after a late substantive (but still not persuasive) application to adjourn, has not turned up to the hearing today. They have refused assistance with her tax coding and have not apparently taken her details of their website. As a result this has all caused the Claimant ongoing stress, has delayed proceedings and required her to take a day off work to prepare for a hearing that cannot proceed as yet.

6. The Claimant was made aware of the limit of the Employment Tribunal's jurisdiction in respect of some of her claims but is entitled to all and any arrears of pay and any other contractual payments including legitimate expenses due to her. She had brought with her today proof of payments received and due but these could not be considered in the absence of the Respondent. This case is now relisted for 15 February 2019 for a 3 hour hearing to determine the issue of what she is owed. The Respondent, though

denying this debt, is currently (and belatedly) referring (in many cases) to the Claimant's hours of work simply as "this entry being in query"; other claimed sums have allegedly been paid. Orders are therefore given separately to inter alia, clarify the amounts due if any.

7. The Respondent has allegedly applied the wrong code to the Claimant's payslips and continued to keep the Claimant's name and profile on the Respondent's website without authorisation. Whilst the Tribunal has no jurisdiction to assist the Respondent in determining these matters the Respondent is expected to resolve both issues before the adjourned Hearing and explain to the Tribunal the steps they have done to do so.

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Employment Judge Russell

Dated: 1 February 2019

Judgment and Reasons sent to the parties on:

5 February 2019

For the Tribunal Office