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EMPLOYMENT TRIBUNALS

Claimant: Mr M Friio
Respondent: EXP Leisure Ltd
Heard at: East London Hearing Centre
On: 16 January 2019
Before: Employment Judge C Hyde (sitting alone)

Representation

Claimant: No attendance
Respondent: No attendance

JUDGMENT

1. The judgment of the Employment Tribunal is that the claim was dismissed.

REASONS

1. Reasons are provided in writing for the above judgment as neither party attended.
2. By a claim form which was presented on 8 June 2018 Mr Friio complained that the Respondent had failed to pay him the appropriate holiday pay.
3. He had worked for the Respondent from 1 September 2017 to 9 May 2018.
4. No response form was presented.
5. In the claim form he complained that the holiday pay that he was claiming of £500.00 was owed from “the start of January 2018”.
6. When his claim was accepted he was informed that it appeared that the claim

may have been presented out of time and therefore that a tribunal would need to determine this in due course.

7. Further, by a letter to the Claimant dated 15 November 2018, he was informed that despite the fact that the Respondent had failed to enter a response to the claim and that there were circumstances in which a judgment could be entered on behalf of a claimant when that happened, as there was a preliminary issue which had to be determined, this could not be done.

8. The Claimant was then reminded that the preliminary issue was whether or not it was reasonably practicable for the Claimant to have presented the claim in time and if it was not, whether the Claimant had presented it within a reasonable time after that.

9. He was further informed that this matter would be determined at the start of the hearing on 26 November 2018. If he was successful and no late application was received from the Respondent to participate in the claim, the judge would then proceed to hear his claim and work out what sums were due to him by way of holiday pay.

10. The Claimant informed the Tribunal in an email sent on 23 November 2018 that he could not make the hearing then scheduled for 26 November 2018 as he had been unable to take the day off work. The hearing was then postponed.

11. The Claimant was informed of this but was also asked to inform the Tribunal if he had heard from the Secretary of State and Companies House and further to clarify how he arrived at the figure of £500.00 as the amount of holiday pay that he was owed.

12. In his response, sent on 28 November 2018, the Claimant indicated that according to the Secretary of State and Companies House, the business was still open and he asked what he should do next. He further indicated that he had used his pay stubs to calculate the £500.00 owed to him.

13. The Respondent had apparently used a web-based system for pay roll and so he no longer had access to his actual payslips. However, he stated that he had used the government holiday pay calculation website along with his payslips to come to that total.

14. By a further email from the Tribunal to the Claimant sent on 12 December 2018, the Claimant was informed that the claim had to have a hearing because of the outstanding issue of jurisdiction (whether or not it was reasonably practicable for the Claimant to have presented the claim in time). He was told that a default judgment could not therefore be issued.

15. He was then informed in the same email that the hearing would be listed for one hour at 10am on Wednesday 16 January 2019.

16. In addition, a formal notice of hearing was sent to the Claimant, with a copy to the Respondent and ACAS in the usual way on 18 December 2018.

17. There was no further record of any communication from the Claimant after that. The Claimant did not attend the hearing. The burden is on the Claimant in such circumstances to establish that the Tribunal has the power to hear his claim.

18. As he did not attend and he had not sent any information on which the Tribunal could base a finding that he had met the relevant test, the Tribunal dismissed the claim forthwith.

Employment Judge Hyde

15 February 2019