



EMPLOYMENT TRIBUNALS

Claimant: Miss B Nemeth
Respondent: La Piola Limited

AT A HEARING

Heard at: Hull **On:** 26th July 2019
Before: Employment Judge Lancaster

Representation

Claimant: Did not attend
Respondent: Mr Zafer Yildiz, director

JUDGMENT

The claim is dismissed.

REASONS

1. The Claimant was telephoned and stated that she had not received a notice of hearing; that she required an interpreter, and; that she could not attend today because she was at work from 2 o'clock. She said, however, that she still wanted to proceed on a future date.
2. I am quite satisfied that the Claimant will have received the notice of today's hearing which was sent out with the acknowledgement of her claim on 5th April 2019. She has never previously given any indication that she will need an interpreter, I have seen a letter and texts apparently from her, all of which are in English, and the Respondent has communicated with her in English.
3. The Respondent (whilst not complying specifically with the orders for disclosure) has produced relevant documents which were attached to the Response (ET3). Those are documents which the Claimant has clearly seen because on 7th May 2019 she wrote to the tribunal in reply to that Response sent to her on 2nd May 2019. The Claimant on the other hand has never produced any documents at all to support her case.
4. Having considered that information available to me, I have decided that it is in accordance with the overriding objective, to deal with cases expeditiously and proportionately, to disallow the Claimant's application for an adjournment. Under rule 47 of the Employment Tribunals Rules of Procedure 2013 I have therefore proceeded

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to hear the case in the absence of the Claimant. I have heard evidence on oath from Mr Yildiz, which I accept.

5. The Claimant went off sick in December 2017. She was paid statutory sick pay, which expired in about June 2018.
6. At that time the Claimant initiated a text conversation with Mr Yildiz where she suggested terminating her employment on the grounds of ill health. The Respondent's position at this point is clear: it was not going to end the employment except by mutual consent. The Claimant then changed her mind so that the proposed termination was not pursued.
7. The Claimant remained unfit to work, and on 10th September 2018 it appears that she was involved in an accident which incapacitated her further. In October 2019 there was a renewed discussion, initiated orally by her, about the Claimant terminating her employment. Again the Respondent's position in an email of 16th October 2018 is perfectly clear: the employment would only be terminated if the Claimant expressly confirmed that she would not be returning to work. That never happened.
8. On 31st October 2018 the Respondent filled in the appropriate forms, at her request, to facilitate the Claimant receiving Employment Support Allowance (ESA).
9. When ESA ran out in early March 2019 the Claimant approached the Respondent again and said that she now wanted to return to work. The Respondent required confirmation from her doctor that she was indeed fit to return. That was never forthcoming.
10. Instead the Claimant says that she was told over the telephone by HMRC that her employment had in fact ended on 1st September 2018, and so on 28th March 2019 she brought a claim alleging unfair dismissal on that date seven months earlier.
11. By a letter dated 24th April 2019 and attached to the ET3 the Respondent's accountants confirmed that she had not ever in fact been issued with a P45 and that her employment remained open.
12. I am quite satisfied that the Respondent never took any positive steps to dismiss the Claimant. All the documented evidence suggests entirely the opposite. The Claimant never received any communication from the Respondent stating that her employment had ended. The Claimant must prove that she was dismissed; she has, of course, not done so as she has failed to attend but in any event there is no indication whatsoever that she would be able to do so on any future occasion either.
13. There is a single complaint before this tribunal which is one of unfair dismissal. At the date of presenting her claim I find as a fact that the Claimant had not even been dismissed nor given notice of dismissal, and that complaint must fail. She was certainly not dismissed, as alleged, on 1st September 2018.
14. The position as of now requires some clarification: as and when the Claimants' employment actually ended (which it certainly seems it now has as she has taken other work which is inconsistent with any continuing contract) she may well have had

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an accrued entitlement to holiday pay whilst off sick, but that is no part of the claim before this tribunal.

EMPLOYMENT JUDGE LANCASTER

DATE 26th July 2019

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