



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P King

**Respondent:** C22Ltd T/A Catch 22

**Heard at:** Leeds

**On:** 3 September 2019

**Before:** Employment Judge Keevash

## Representation

Claimant: Not present and not represented

Respondent: Mr M McNelly, Consultant

**JUDGMENT** having been sent to the parties on 4 September 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Background

1 By his Claim Form the Claimant brought a complaint of unauthorised deductions. By its Response the Respondent resisted the complaint. The matter was listed for hearing.

2 By an email dated 2 September 2019 (the day before the hearing) sent to the Tribunal the Claimant stated:-

"I have a case tomorrow for unpaid wages. I have been signed off work since this has happened and catch 22 refusing to pay me, due to the stress it has caused. I have suffered with depression and anxiety and my doctor signed me off work – which I am still currently off sick. I wish to please request that I don't need to attend the hearing as I don't think I am up to it due to this anxiety and depression – I do however wish to also claim for compensation as stated for loss of earnings caused by this stress catch 22 have caused me. I believe that you have all the documents that have been sent by myself and catch 22 regards the case."

3 By an email dated 2 September 2019 sent to the parties a Tribunal clerk stated:-  
" ...

Employment Judge Lancaster has asked me to write the following:

If the Claimant does not attend the listed hearing to prove his case it is highly likely that his claim will be dismissed. If he wishes to apply for a postponement he should

provide supporting medical information to explain why he is unable to attend the hearing.”

4 By an email dated 2 September 2019 sent to the Tribunal the Claimant stated:-  
“Thank you.

I am ill. I have been off with depression and anxiety since catch 22 refused to pay me for hours worked. Please advise further options. Can I just take to a county court then if you are saying it will be thrown out.”

5 By an email dated 2 September 2019 sent to the parties a Tribunal clerk stated:-  
“ ...

Employment Judge Lancaster has asked me to write the following:  
It is up to the Claimant whether to attend or not or to apply for a postponement. The Claimant should confirm whether if he is intending to withdraw his Tribunal Claim with a view to re-presenting the claim to the County Court. A late withdrawal may however give rise to an application for the costs of the tribunal Proceedings.”

### **Hearing**

6 The Claimant did not attend the hearing.

### **Law**

7 Rule 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Regulations”) provides:-

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”

Rule 2 of the 2013 Regulations provides:-

“The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable-

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

### **Discussion**

8 The Employment Judge noted that in his Claim Form the Claimant contended that he was owed forty five hours worked but unpaid. In paragraph 9.2 he stated that he wanted to be compensated for any legal costs incurred, the stress caused by the Respondent. He added that he had taken a loan “to see me through”. By its Response the Respondent contended among other matters that claim did not correspond with their records.

9 The Employment Judge decided to explore whether any part of the Claimant's claim was admitted by the Respondent. Although it was clear that the Tribunal could not award compensation for stress and anxiety allegedly caused by the Respondent's unauthorised deductions (or for any loss of earnings suffered as a result of that stress and anxiety), it might have been possible to give Judgment for an agreed amount in respect of the deductions. Mr McNelly produced two bundles of documents which included an email dated 10 July 2019 in which the Claimant appeared to revise his claim down to fifteen hours fifty minutes worked but unpaid. In response to a question from the Employment Judge Mr McNelly confirmed that this revised claim was also disputed by the Respondent.

10 The Employment Judge considered whether he should adjourn and relist the hearing so as to give the Claimant another opportunity to attend. He rejected that course of action because it would not be in accordance with the overriding objective set out in Rule 2 of the 2013 Regulations. From about 10 July 2019 the Claimant knew that the matter had been listed for a hearing. If he was ill at that time, it was open to him to apply for a postponement to allow him time to recover. He made no such application. He waited until the day before the Hearing before writing to the Tribunal. Even then he did not apply for a postponement. He asked for permission not to attend. The Tribunal responded and explained the likely consequence of his request and suggested what he needed to do if wanted to apply for a postponement. In his reply the Claimant asked about County Court proceedings. Again he did not ask for a postponement. The Tribunal responded again referring (by implication) to the fact that no application for a postponement had been made. In the circumstances the Employment Tribunal decided to proceed with the Hearing. An adjournment would be neither fair nor just.

11 The Employment Judge decided that because all parts of the claim were in dispute the claim could not be decided without oral evidence from the Claimant which could be tested at a Hearing by cross examination and questioning by an Employment Judge. As the Claimant did not attend, there was no further evidence to discharge the burden of proof which lay on him. Accordingly, the Employment Judge decided that the claim failed.

Employment Judge **Keevash**

Date 5 September 2019