



EMPLOYMENT TRIBUNALS

Between:

Mr B Burns

Claimant

and Sambob Ltd
Respondent

Heard at: Leeds **on:** 17 January 2020

Before: Employment Judge Cox

Representation:

Claimant: Did not attend

Respondent: Mr Witty, director

JUDGMENT

The claim fails and is dismissed.

REASONS

1. On 14 November 2019, the Claimant presented a claim alleging that the Respondent owed him notice pay, holiday pay, arrears of pay and other payments. In the box on the claim form where he was invited to set out background and details of his claim he said he was looking for payment for the work he had completed from 10 September to 26 September 2019. He said that 20 days' payment was due on a day rate agreed with Bobby Witty. He appeared to be saying that at his initial meeting with Mr Witty he agreed to pay him £125 per day. He said he was looking for £2,500 for the work done and payment for the pressure he had been put through. He made no mention of notice pay or holiday pay. He claimed £3,600 in total.
2. On 15 November 2019 the parties were sent a notice that the claim would be heard on 17 January 2020. The notice was sent to the Claimant by email, as he had requested in his claim form, to the email address he supplied. The Respondent was told that it had until 13 December 2019 to respond to the claim.

3. On 13 December 2019 the Respondent emailed the Tribunal saying that it was not sure why it had been sent the claim as the Claimant was self-employed and he had been paid for his work. On 19 December 2019 the Tribunal wrote to the Respondent saying that its response had been rejected because it was not on the prescribed form. A further response form for it to use was enclosed with that letter. Although the response was rejected, the Tribunal did not cancel the Hearing because the claim form was unclear and a determination could not properly be made until the Claimant clarified what he was claiming at a Hearing (as provided for in Rule 21(3) of the Tribunal's Rules of Procedure).
4. Half an hour later the Respondent emailed the Tribunal and said that it had been told by "someone", presumably from the Tribunal's administrative staff, on a number that is not in fact a number used by the Tribunal, that the rejection letter was sent out by mistake and to await a response from the Judge. On 23 December 2019 the Tribunal wrote to the Respondent again, repeated the information that the response had been rejected and that it was up to the Respondent to take action. The letter enclosed guidance for the Respondent on what to do if its response had been rejected.
5. On 15 January 2020 a man 'phoned the Tribunal on behalf of the Respondent and complained. He said that the Respondent had not received the Tribunal's letter of 23 December and that he had been told by a member of the Tribunal staff that he did not have to complete the response form.
6. On 17 January 2020 at 9.18, 50 minutes before the Hearing was due to begin, the Tribunal received an email from the email address provided by the Claimant in his claim form which said: "What is happening with this? My client is still wishing to go ahead and we haven't heard anything?" The Claimant had not said in his claim form that he had a representative, but the email address he had provided was Lindsay@HHDriveright.com, indicating that someone called Lindsay was involved in handling his claim. This appeared to be the person who was referring to the Claimant as "my client" in this email. At the direction of the Judge conducting the Hearing, a member of the administrative staff telephoned the number provided by the Claimant in his claim form, which was answered by someone called Lindsay. The staff member asked whether she or the Claimant would be attending the Hearing. She said she had not received the notice of hearing. She would not be able to attend as she was working and the Claimant could not attend as he was working in Scotland. She confirmed that the Claimant wanted to pursue his claim. She made no application for the Hearing to be postponed.
7. The Claimant did not attend and was not represented at the Hearing, but the Tribunal decided to proceed with it in the Claimant's absence, as it was entitled

to do under Rule 47 of its Rules of Procedure. The Tribunal did not accept that the Claimant had not received notice of the hearing. The notice of hearing had been sent to the email address supplied by him in his claim form.

8. At the Hearing, Mr Witty, director of the Respondent, attended. He produced various documentation which appeared to the Tribunal to be directly relevant to the claim. Although the Respondent had not presented a response to the claim, in spite of substantial assistance from the Tribunal staff in emphasising that it needed to do so, the Tribunal exercised its discretion under Rule 21(3) to allow the Respondent to participate in the Hearing to the extent necessary for it to submit those documents for the Tribunal's consideration. The documents included: an email dated 16 October 2019 from the Respondent to the Claimant confirming that he had left without notice on 26 September 2019 and he would be paid his remaining wage on 14 November 2019; a document headed "Contract for provision of services (self employment)"; a copy of a job advertisement by the Respondent for van drivers stating that they would be paid on a drop rate (that is, per collection or delivery); a "Self-billing invoice" dated 11 October 2019 generated by the Respondent for the Claimant for £287.84, which stated the number of parcel collections and deliveries made; and an email sent by the Respondent to the Claimant on 14 November 2019 confirming that it paid drop rates to all its drivers, not day rates, and that he was fully aware of this from the start.
9. As the Claimant had not attended the Hearing, the Tribunal was unable to clarify with him the nature of his claim and the basis on which he was claiming £3,000. He was claiming for 20 days' pay at £125 per day, but the parties agreed that he was employed from 9 to 26 September 2019, which was less than 20 days. He also appeared from the email of 16 October 2019 and invoice produced by the Respondent to have been paid some remuneration for his work, which he had not mentioned in his claim form. He was claiming for notice pay but there was some evidence from the Respondent's email of 16 October 2019 that he had resigned, rather than being dismissed without notice. He had at no point provided details of what holiday pay he said he was owed.
10. In the absence of the Claimant to provide clarification and evidence on these matters, the Tribunal was not satisfied that the Claimant had established that he was due the things he claimed and decided to dismiss the claim.

Employment Judge Cox
Date: 17 January 2020