



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100316/2019

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Held in Glasgow on 30 May 2019

Employment Judge: R McPherson

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Mr D Pospiszył

Claimant

No appearance

Sukwinder Singh Kang and Parmjit Kang t/a The Wine Cellar and Food & Wine Cellar **Respondent**
Represented by:
Mr B Brown -
Trainee Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims for unfair dismissal, unpaid holiday pay and breach of contract are dismissed.

REASONS

1. The claimant presented a claim for unfair dismissal, holiday pay and unlawful deductions of wages on 18 January 2019, through his former agents.
2. The respondents presented their ET3 on 3 March 2019, asserting that the date of termination was 17 August 2019.
3. The former agents withdrew from acting.
4. The Tribunal directed that there should be a preliminary hearing in relation to time bar, it being identified from the ET1 and ET3 that there was a factual dispute between the parties as to the effective date of termination, the respondents arguing that the claim was presented out of time.

5. The Tribunal wrote to the claimant on 4 May 2019 at the address provided by the claimant in his ET1, no other address having being provided to the

E.T. Z4 (WR)

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Tribunal notifying the claimant of the Preliminary Hearing which was scheduled to start to 2pm on 30 May 2019.

6. The claimant did not attend the Preliminary Hearing. Nor was there any representative in attendance for the claimant. The respondents attended with their representative and had been prepared to give evidence in support of the factual assertions contained in their ET3 relating to the date of termination.

Relevant Law

7. Employment Tribunals (Constitution & Rules of Procedure) Regulations 10 2013, (the Tribunal Rules) (the 2013 Rules) Rule 47 provides as follows:

47. 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 parties' absence.

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Discussion and Decision

8. I considered all of the information which was available to me. Such enquiries as were practicable were made, including the Tribunal's clerk making enquiries in the Tribunal building and seeking to seeking to make contact with the claimant by telephone, the respondents having provided a telephone number they had for the claimant, no other telephone number having been provided. No alternate postal address for the claimant had been provided prior to the Tribunal's letter of 4 May 2019. An adjournment of 15 minutes was considered reasonable however there was still no contact from the claimant.

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9. The Tribunal had written to the claimant, at the address available, on 4 May 2019, informing him and reminding him of the purpose of Hearing listed for

Thursday 30 May 2018 together with the need for any witness attendance. If

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there is a valid explanation for non-attendance, it would be open to him to apply within 14 days for reconsideration of this decision.

10. The respondents through their representative attended the hearing Thursday 30 May and had prepared to give evidence in support of their position on the date of termination, gave consideration to seeking a costs order against the first claimant under rule 76 (1) of the Tribunal Rules which provides that a Tribunal may make a costs order "*where it considers that a party has acted vexatiously... or otherwise unreasonably in either the bringing of proceedings... or the way that the proceedings...have been conducted*"
- however the respondents did not seek to insist on such a costs order, at this time.

11. I am of the view that a dismissal of the claim is appropriate in these circumstances and in accordance with the overriding objective in terms of Rule 2 of the 2013 rules to deal with cases fairly and justly.

Conclusion

12. The claimants' claims for unfair dismissal, holiday pay and arrears of pay are hereby dismissed.

Employment Judge

R McPherson

Date of Judgment

30/05/2019

Entered in register to parties

04/06/2019 and copied

I confirm that this is my judgment or order in the case of Pospiszyl v S and K Kang 4100316 2019 and that I have signed the order by electronic signature.