



# EMPLOYMENT TRIBUNALS

**Claimant: Mr R Stirling**

**Respondent: Bristol Street Fourth Investments Limited**

**Heard at: Middlesbrough**

**On: 9 January 2020**

**Before: Employment Judge A.M.S. Green**

## **Representation**

Claimant: Not present or represented

Respondent: Mr P Sangha - Counsel

# JUDGMENT

The claimants claims are dismissed for non-attendance under Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1

# REASONS

1. The claimant presented a claim form to the Tribunal on 4 November 2019 claiming unfair automatic dismissal which he claims arose from his making public interest disclosures. He also claimed notice pay, holiday pay and arrears of pay. He claims that he was dismissed with effect from 25 September 2019 from his employment as a new cars sales executive. He worked in Glasgow. The claim was originally against Vertu Motors PLC, a company based in Gateshead. The respondent defended the claim and also sought an amendment to the respondent's details to reflect the correct identity of the claimant's former employer. It says that the correct employer was Bristol Street Fourth Investments Limited, a member of the same company group and which has its registered office at the same address in Gateshead.
2. A private preliminary hearing was listed to be heard in Middlesbrough on 9 January 2020. The Tribunal notified the parties of the hearing in writing on 14 November 2019.

3. There was correspondence from the Tribunal concerning the proposed change of name to which the claimant did not respond. The Tribunal sent letters to the claimant on 17 and 23 December 2019. In the letter of 23 December 2019, the claimant was required to respond to the Tribunal by 31 December 2019 as to whether he objected to the change of the respondent's name. There is no record on the Tribunal's case management system or on the paper case file of the claimant responding to the Tribunal as required.
4. On 7 January 2020, the respondent applied under rule 37 for a strike out of the claim for the claimant's failure to respond to the Tribunal's letter of 23 December 2019 and also on the basis that the claimant was behaving unreasonably and that the claim was not being actively pursued. The Tribunal stipulated to the parties that this would be dealt with at the private preliminary hearing on 9 January 2020.
5. Shortly before the start of the hearing on 9 January 2020, the Tribunal was handed an email from the claimant which had been written in response to the respondent's solicitor's email date 7 January 2020 seeking the strike out order. The claimant's email was not copied to the Tribunal. It is dated 8 January 2020 and was sent to James Wilders, the solicitor acting for the respondent. It is short and states:

*A case has been raised for unfair dismissal & whistleblowing however the case will be heard in Newcastle when I live in Glasgow, I feel this is a deliberate attempt to be sure that I cannot attend the hearing.*

*I responded to the letter regarding the name of the company to be changed and said that I had no objection to this.*

6. Mr Sangha did not pursue his application for strike out under rule 37. Instead, he invited the Tribunal to dismiss the claims because of the claimant's failure to attend the hearing under rule 47. He submitted the following in support of his application:
  - a. The claimant had completed the ET1 form and had provided details of the respondent's address in Gateshead. In terms of rule 8(2)(a), the Tribunal in England & Wales has jurisdiction to hear the claims given that the respondent resided or was domiciled in England. Consequently, there was no basis for the claimant to allege that the case had been listed to be heard in Newcastle as a deliberate attempt to ensure that he would not be able to attend. Furthermore, the claimant was unhappy about the case being heard in England, he had not applied to transfer the claim to Scotland as permitted under the rules of procedure.
  - b. The claimant was notified in writing by the Tribunal on 14 November 2019 of the hearing on 9 January 2020. He had not applied for a postponement. He had not told the Tribunal that he would not be attending and he had not asked the Tribunal to proceed in his absence.
  - c. This was not a straightforward case. The claimant was alleging

automatic unfair dismissal arising from his claim to have made public interest disclosures. However he had not particularised those disclosures and until such time as he did, the respondent was unable to answer the allegations. In the absence of that information, the Tribunal was in no position to proceed in the claimant's absence.

7. Rule 47 of the rules of procedure provides:

*If a party fails to attend or 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.*

8. For rule 47 to be engaged, I have to consider the reasons for the claimant's absence and not the merits of his claim. I am satisfied that the claimant was fully aware of the hearing on 9 January 2020. He was duly notified of the hearing by the Tribunal on 14 November 2019. He corresponded with the respondent's solicitor on 8 January 2020 referring to the claim being listed in Newcastle (despite the fact it was listed in Middlesbrough). He did not apply for an adjournment nor for the case to be transferred to Scotland. He provided no explanation for not attending and he has not sent a representative. It is quite wrong of the claimant to allege that the case was listed in Newcastle as a deliberate attempt to prevent him from attending given that his claim is directed against an entity that is based in Gateshead. The English Tribunal was the correct venue to hear his claim. Had he wanted his claim to be heard in Glasgow, he could have directed his claim against the respondent's branch where he worked in Scotland or he could have applied to have the case transferred to the Scotland. He did neither.
9. Mr Sangha's submissions on the merits of the claim and the lack of information regarding the alleged public interest disclosures went beyond what was required under rule 47 and I am not required to consider them when determining whether to dismiss the claim.
10. Under all the circumstances, the Tribunal is justified in dismissing the claimant's claims under rule 47.

Employment Judge A.M.S. Green

Date 9 January 2020