



EMPLOYMENT TRIBUNALS

PRELIMINARY HEARING BY TELEPHONE

Claimant: Ms I Rimoniene
Respondent: Awaias Riaz

Heard at: By Telephone **On:** 6 March 2020

Before:
Employment Judge JM Wade

Representation

Claimant: no attendance by 10.23am; no attendance by 10.39 am
Respondent: no attendance as above

JUDGMENT

The claimant's outstanding deductions from wages complaint is dismissed upon her failure to attend or be represented at today's preliminary hearing, pursuant to Rule 47.

REASONS

1. The claimant, from Lithuania, presented her claim on 27 December 2020 as a litigant in person. She had indicated in her claim form that she wanted to claim for unfair dismissal, arrears of pay and other payments. She indicated the reason she was not paid was because of some damage to carpets; and that the respondent's position was that she was a self employed cleaner. The amount pursued was in respect of work for a week or so. In a subsequent amendment to the claim permitted by an Employment Judge, she said this:
2. *"I worked from November 18 to November 26, 2019 for Awaias Riaz, owner of the 42 Hotel. My name is Indre. I am from Lithuania. I have the right to work in the United Kingdom. As you can see from the evidence stated via text messages, I cleaned hotel rooms for the owner during the time stated above. I have not received payment for my services rendered. I worked 7 days in total November 18 to November 22 and November 25 and November 26. 7 days for 8 hours each day which would equate to 56 working hours. The money I believe I am owed is 456.76 pounds before taxes. I worked that time and completed the tasks of cleaning the rooms to the best of my ability. I left the job site after completing my work without payment. As you can see from the evidence provided that I did complete the tasks which was acknowledged by the owner. On November 29, 2019 I texted Awaias Riaz about payment, he said I damaged the carpet. I did not damage anything in the hotel. And I worked there which is shown in the evidence from my photographs presented. He admits that I worked there from the text messages provided. All I am asking for is payment for services rendered.*

3. On 24 January 2020 the unfair dismissal complaint was dismissed for want of two years' employment. The respondent presented a response to the wages complaint which was clear as to the basis on which self employment was relied upon. Also attached were photos of alleged damage to flooring and carpets.
4. This hearing final hearing was converted to a case management hearing by telephone to explore dispute resolution or postponement. Neither party attended. I directed calls and further emailing of the notice of hearing and conference call details. The claimant's telephone number was out of service. No information could be obtained.
5. The possible judicial decisions today are:
 - 5.1. Consideration of adjournment of today's hearing.
 - 5.2. Dismissal today simply in circumstances of non attendance, pursuant to Rule 47 (that is without determining the merits).
6. The non attendance of a party puts other parties and the Tribunal to wasted costs and expense, and deprives other Tribunal users of those resources both judicial and administrative. Currently there is strain on those resources as a result of increased workload and covid 19, with no prospect of that reducing, and likely increase.
7. Options 1 is not prejudicial to the claimant, it allows her to attend on a future date (likely September onwards). However, it puts the respondent and the Tribunal to ongoing cost simply by complaints being undisposed, or delay in their determination, when they may otherwise have been subject to deposit orders today. Option 2 wastes little time and cost but deprives the claimant of pursuing her claim. However, there is less prejudice where, on the face of the claim and response, there are real difficulties with the complaints. My assessment of the merits taking into account the amended claim, evidence presented (text messages throughout), and photographs of rooms and damage, is as follows: the claimant will have real difficulties establishing she was a worker or an employee, rather than being self employed on this particular matter,
8. The balance of prejudice today lies against the claimant. I exercise my discretion to dismiss pursuant to rule 47 today (Option 3). I include in my consideration that an "off the record" representative may have muddied communications and clouded what was an error by the claimant. Nevertheless, fairness to the respondent and other tribunal users requires a balance to be struck in the circumstances I describe. On this occasion the right balance lies in bringing these proceedings to an end for non attendance.

Employment Judge JM Wade

25 March 2020