



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr F J Zaoui

**Respondent:** F.Fretwell-Downing Group Limited t/a The Maynard (in liquidation)

**HELD AT:** Sheffield

**ON:** 3 August 2020

**BEFORE:** Employment Judge Little

## REPRESENTATION:

**Claimant:** No attendance or appearance

**Respondent:** Mr P Downing (former director)

## JUDGMENT

The claim is struck out because it is not being actively pursued and, insofar that it is being conducted, it is being conducted unreasonably.

## REASONS

1. Although the claimant had named the respondent as 'The Maynard Arms', that was not a legal entity and I am satisfied that the correct legal entity is F.Fretwell-Downing Group Limited trading as The Maynard. Accordingly I have amended the title to the proceedings.
2. Unfortunately that company is in a creditor's voluntary liquidation which commenced in June 2020.
3. Mr Downing had been invited to join this hearing by the Tribunal's letter of 24 July 2020 to confirm the correct identity of the respondent. He has done so and explained that the respondent is insolvent and has no funds. Strictly speaking, as

liquidators have now been appointed, the directors do not have authority on behalf of the company but nevertheless I am grateful for Mr Downing for having joined today's hearing.

4. Regrettably the claimant did not join today's hearing. When he was not present at 2 o'clock I asked my clerk to telephone him but I understand that the call would not go through because of a restricted code. My clerk then sent an email to the claimant but no response had been received by 2.10pm. In these circumstances I concluded that the claimant was not going to join and had presumably abandoned his claim although unfortunately without informing the Tribunal.

#### After Note

- i. I am now aware that at 15:09 today (3 August 2020) the claimant sent an email to the Tribunal which read as follows:  
*"As many time I've said before by mail juste (sic) started a new job and not be able to attempt to the hearing sent you email and I been ignored. I did asked (sic) to change the hearing date to move to September and the email was sent last week before the hearing day and the courts has not reply me.*  
*So here again that mail I am sending to you you can fix another hearing video for September as I am on trial shift and work Monday to Friday 9h 30am finish at 6pm so I can't see when I can be on hearing."*
- ii. I am informed that the Tribunal did not receive an email from the claimant last week seeking an adjournment or otherwise – that is despite what the claimant's 3 August email implies. When the claimant says "so here again that mail I'm sending to you", he does not in fact attach any earlier email.
- iii. This claim was presented to the Tribunal on 26 August 2019. A hearing was listed for 28 October 2019. On 23 September 2019 the claimant sought an adjournment of that hearing and gave the reason that he had to attend an important meeting in France.
- iv. On 24 September 2019 the claimant added that he would not now be back in the UK until 25 March 2020. The 28 October hearing was duly vacated and the case was re-listed. Unfortunately it was re-listed for 3 March 2020 and so prior to the date when the claimant had indicated he would return to the UK. I should add that of course at that stage hearings of this type were being conducted in person and would not routinely have been conducted by video. The notice of hearing for 3 March had been sent to the claimant on 21 October 2019 but he had made no objection, that is to say had not pointed out the Tribunal's error.
- v. I conducted the hearing on 3 March 2020 at which neither party attended although I realised, having read the file, why the claimant had not attended.
- vi. On 6 March 2020 the claimant wrote to the Tribunal explaining that his father was very sick and that he was in Paris and so the claimant really needed to change the hearing date. I am not sure what hearing date the claimant was referring to as of course the 3 March date had passed.
- vii. On 20 March 2020 the claimant wrote to the Tribunal indicating that because of the coronavirus situation in France he would not be able to leave the country. He requested that the hearing date be further delayed.

- viii. That led to the issue of a notice of hearing on 8 April 2020 giving 3 August 2020 as the hearing date and on 18 July 2020 the parties were advised that that hearing would be by video so the parties were not required to attend in person.
- ix. On 27 July 2020 the claimant forwarded an email from the agency who had supplied him to the respondent. This was brief but did amount to the only documentary evidence the claimant has ever provided about this claim. The claimant said nothing in that email about any new job which would prevent him attending the hearing a few days later on 3 August.
- x. I should add that this claim concerns allegedly deducted wages in the amount of £120 and possibly holiday pay, which could amount to no more than half a day. The respondent, as noted above, is in liquidation and insolvent. In addition to the history set out above the claimant has never provided any documentary proof on such issues as whether he was an employee or worker for the respondent (they allege he was self-employed). Nor has he given any proper explanation of why he believes that he is entitled to a further £120.
- xi. In all these circumstances I consider that the claimant is conducting these proceedings in an unreasonable manner. As the history above indicates there have been a series of adjournment requests by the claimant. Whilst an adjournment request obviously has to be considered seriously, I get the impression that the claimant is abusing the process and is treating his claim as something which he *may* deal with when he feels he has the time to do so. He is therefore failing to make a proper effort to get this matter resolved. That is aggravated by the failure to properly articulate his claim. Although the Tribunal must bear some fault for the 3 March 2020 hearing being abortive, the claimant seems to be at fault in terms of today's hearing also being abortive. It is to be borne in mind that Mr Downing who had no real obligation to attend today's hearing has done so whereas the claimant whose claim it is has not.
- xii. In all these circumstances I consider that failing to actively pursue his case coupled with what I consider to be unreasonable conduct of the proceedings justifies the striking out of this claim.

Employment Judge Little

Date 6<sup>th</sup> August 2020

JUDGMENT SENT TO THE PARTIES ON

Date 7<sup>th</sup> August 2020

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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