



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr T Jeurinck & Mr M Scatena

**Respondent:** Piatto (London) Ltd

**Heard at:** London South Croydon

**On:** 5 August 2020

**Before:** Employment Judge Tsamados (sitting alone)

## Representation

Claimants: Did not attend

Respondent: Did not attend & not represented

This was a remote open preliminary hearing which was not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all of the issues could be determined in a remote hearing. In the event, the hearing did not proceed and the judgment made is described below.

## JUDGMENT

The claimants' claims are dismissed.

## REASONS

1. This matter was listed for a two-day open preliminary hearing by Employment Judge Ferguson at a closed preliminary hearing held on 20 June 2019. The intention of today's hearing was to determine the claimants' employment status for the purposes of their complaints of sexual orientation discrimination and unauthorised deductions from wages. Employment Judge Ferguson also set a number of case management orders as to disclosure of documents,

preparation of a trial bundle and exchange of witness statements in advance of this hearing.

2. The parties were advised by the Tribunal that the hearing would take place by possible video link in email correspondence dated 16 July 2020, to which the claimants responded by email on 19 July 2020. However, there was no response from the respondent. The parties were further advised that the hearing would take place by way of the Cloud Video Platform (CVP) in email correspondence dated 29 July 2020. By a further email dated 4 August 2020, the Tribunal provided the parties with the necessary login details and guidance as to joining CVP hearings.
3. The only response from the parties since that date, was an email from the claimants dated 4 August 2020 and received at 6:22 pm indicating that they were not able to attend the hearing. In summary, this was said to be for the following reasons: the claimants had not received any communication, bundles or other documentation from the respondent or its representatives; as a result the claimants were not able to obtain legal advice from the Citizens Advice Bureau as to how to respond to the respective documents or how to prepare for the hearing. In the email the claimants asked the tribunal to propose a solution as to how to enforce the respondent's cooperation in the case. This email was only brought to my attention shortly before the start of the hearing.
4. I commenced the hearing at 10 am and waited until 10.30 am by which time none of the parties attended.
5. Under rule 47 of schedule 1 of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013, where a party fails to appear at a hearing, either in person or through a representative, 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.
6. I therefore considered whether on the basis of the information available to me and any enquiries that were practicable whether to continue today or whether to dismiss the claim. I also considered the general powers available to the Tribunal under rules 29 and 41 which include adjourning the hearing if it is considered just to do so.
7. In the light of the correspondence sent, the replies received from the claimants and the lack of response from the respondent, I did not believe it practicable to make any further enquiries of the parties. They had all been given ample notification of today's hearing, that it was by CVP and how to join the hearing. Indeed, the claimants had written in expressing their intention not to attend and the reasons why.
8. In reaching my decision I took into account the following matters.
9. Employment Judge Ferguson had set clear case management orders designed to prepare for a two day open preliminary hearing as long ago as 20

June 2019. On or before 1 August 2019 the parties were to disclose documents to each other. By 10 June 2020 the parties had to agree which documents were going to be used at the preliminary hearing and the respondent had to produce the bundles for use at the hearing. Witness statements were to be exchanged on or before 8 July 2020. The respondent had to provide sufficient copies of the bundle for use at the hearing and each party had to provide copies of its own witness statements for use at the hearing.

10. There is nothing on my file to indicate that either party has complied with these orders. I do not have a copy of a trial bundle and I do not have copies of any witness statements from any of the parties. Whilst I understand from the claimants that the respondent has not complied with any of the case management orders, I do not have any witness statements from the claimants.
11. The only prior indication of any difficulties as to preparation or non-compliance with the case management orders is contained within the emails received from the claimants on 19 July 2020 in answer to a series of set questions relating to preparation for the hearing. Question 6 states that the parties should be able to ensure that by the time of the hearing they and their witnesses each have a copy of the tribunal bundle and of all the witness statements of both parties. In response, both claimants stated, "the respondent is responsible for the bundle, they have not yet submitted and/or forwarded the bundle for review nor have they communicated about the bundle or anything else for that matter whatsoever". No mention is made as to the position of witness statements.
12. The issue before the Tribunal today is whether the claimants have sufficient employment status in order to bring the complaints of sexual orientation discrimination and unauthorised deductions from wages. The burden of proof is on the claimants and without at least their attendance it is simply not possible to determine this matter. Had they attended, even without the attendance of the respondent or the availability of a bundle or indeed without witness statements, it is highly likely that I could have dealt with the matter and reached a determination. Indeed, I have the claim form, the response and contractual documentation relied upon by the claimants on my file.
13. By sending an email after close of business the night before the hearing stating that they will not attend, the claimants have attempted to present a fait accompli. I find that it would have been reasonable for the claimants to have sought legal advice from the Citizens Advice Bureau as indicated even without the documentation from the respondent. Further I find that it would have been reasonable for the claimants to have prepared witness statements for use by the Tribunal today and to attend, or to have attended and given oral evidence, even without any documentation from the respondent. Additionally, I find it reasonable that the claimants should have raised the matter of the respondent's non-cooperation much sooner than they did. Finally, I find it reasonable that the claimants should have attended the hearing (which after all only involved joining a video link) if only to explain their position and to ask the Tribunal for the hearing to be postponed, rather than simply not turning up.

14. In the circumstances, I do not believe it is just to postpone the hearing and I simply cannot continue in the absence of the claimants. Having considered the information available to me I have reached the conclusion that the claimants' claims should be dismissed.

Employment Judge Tsamados

5 August 2020

SENT TO THE PARTIES ON

24 August 2020

Anthea Simpson  
FOR EMPLOYMENT TRIBUNALS