



EMPLOYMENT TRIBUNALS

Claimant: Mrs Louise Winsborough

Respondent: CRG Homecare Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in private by telephone) **On:** 27 August 2020

Before: Employment Judge R S Drake (sitting alone)

Appearances

For the Claimant: No attendance

For the Respondent: Ms C Barnard

JUDGEMENT

The Claimant's claim of unfair dismissal is struck out in accordance with Rule 37(1) paragraphs (a) to (e) inclusive in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), on the grounds that the claim has no reasonable prospect of success, has been conducted unreasonably in the Claimant not responding to Case Management Orders or to requirements to attend Preliminary Hearings, she has not complied with Case Management Orders, she is not apparently actively pursuing the claim, and it is no longer possible to have a fair hearing without understanding the basis upon which the Claimant seeks to prove her claim without evidence.

Reasons

- (1) The basis of Claimant's claim is fully noted and recorded in the Case Management Orders made by EJ Shepard 26 March 2020 – it is a simple claim

alleging failure to pay for time engaged by the Claimant in travel in the course of her work. The Respondent's defence is simply that travel time is taken into account in calculation of her overall rate of pay and thus there has been no failure to pay her full entitlement as to wages, and that she was paid at a rate exceeding the minimum rate prescribed by the National Minimum Wage Act 1998.

- (2) I noted that EJ Shepherd had promulgated Orders requiring, amongst other things, the Claimant to serve a Schedule of Loss being a calculation of what she says she is entitled to claim, but that so far, she has failed to comply. This engages and brings into consideration the terms of paragraph (c) of Rule 37(1).
- (3) Further, I noted that the Claimant has been in contact with both the Respondent and the tribunal via communication sent from and to both her postal and email addresses to which notice of the hearings on the 26 March 2020 and of today have been sent. Therefore I am satisfied that the Claimant knew of today's hearing and knew that throughout these proceedings she has faced a request by the Respondent that the Tribunal consider striking out her claim on a number of grounds, including failure to attend hearings and their belief that the claim has no merits. I therefore concluded that the Claimant is and was at all material times aware that at any Preliminary Hearing she would face an application for strike out.
- (4) I further noted that since the last preliminary hearing the Claimant, who has corresponded with the Tribunal saying that she couldn't comply with the Order as to a schedule of loss as she had no access to evidence, but EJ Wade responded by saying that she should try to do her best and comply by recording as much as she could from her own memory, thus offering the opportunity to rely upon potentially oral evidence. The Claimant was not in attendance today to confirm that she could or would rely on oral evidence, though I am satisfied that she was aware that she could have attended and could have said so. As it stands, she has not. This engages paragraph (d) of Rule 37(1).
- (5) I further noted that since the communication from EJ Wade, EJ Cox caused a letter to be written to the Claimant dated 13 July 2020 saying the following: -

“The Claimant has said that she has no access to records of her travel time. The Respondent's witness statement makes no reference to the documentation on which it intends to rely to show the Claimant's travel time nor to whether there is any contractual documentation relating to her entitlement to be paid for travel time. The Tribunal therefore needs to hold a further preliminary hearing to discuss whether and how there can be an effective hearing in this claim” - and a notice of today's hearing was enclosed.

This engages Paragraph (e) of Rule 37(1)

- (6) The hearing today was set in terms to examine whether the claim had no reasonable prospect of success and also whether it was still possible to hold a fair hearing without evidence from either side supporting their respective arguments but clearly in all such claims the onus of proof rests with the Claimant who has said she has no evidence and has now twice failed to attend Tribunal to

make her position clear and is apparently not fully pursuing her claim. This therefore engages paragraphs(a), (b) and (d) of Rule 37(1).

- (7) I heard detailed argument from the Respondent's representative and considered all the material before me on the Tribunal file.
- (8) For the sake of completeness, I set out below the basis upon which I had to consider the position so far as set out in Rule 37: -
 - (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –
 - (a) that it ... has no reasonable prospect of success;
 - (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant has been ... unreasonable;
 - (c) for noncompliance with any of these Rules or with an order of the tribunal;
 - (d) that it has not been actively pursued;
 - (e) That the tribunal considers that it is no longer possible to have a fair hearing in respect of the claim ... (my emphases)
- (9) For all the reasons set out above, I conclude each and all of the above paragraphs of rule 37(1) are engaged and empower me to strike out the claim in accordance with rule 37. Therefore, I have no alternative but to dismiss the claim

Employment Judge R S Drake

3 September 2020