



EMPLOYMENT TRIBUNALS

Claimant:
Mr Glen Gee

Respondent:
**Nexus Resourcing
Ltd**

Heard at: Leeds (By Video Link) **On:** 15 January 2021

Before: Employment Judge R S Drake

Representation:

Claimant: In Person (by video)
Respondent: Mr A Baile (Director) (by telephone)

JUDGMENT

1. The Claimant has not established that he was entitled to wages allegedly withheld or to the sum of £100 allegedly paid by him as a fee for an HGV licence training course which the Respondents had allegedly not refunded. On this substantive basis his claim fails and is dismissed.
2. In any event, I strike out the claim by reason of the Claimants complete and deliberate failure to comply with Case management Orders promulgated by EJ Davies on 24 September 2020 requiring him to disclose and exchange his documentary and statement evidence.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

REASONS

2. The Claimant attended in person, but his attendance was unexpected since he had not replied in writing either to the Tribunal nor to the Respondent in relation to any communications sent to him. Nonetheless, I allowed him to speak to explain himself and his position. The Respondents argued that he had not complied with Case Management Orders dated 24 September 2020 and had produced no evidence here today (documents and/or statement) for the purposes of this hearing.

Issues

2. At the start of the hearing and bearing in mind the Claimant was not legally represented, I took time and care to explain to the Claimant the requirement for him to discharge the burden of proof which rested with him and that to do so he would need to have produced and exchanged his evidence and a written statement in support. He said he relied solely on his Claim Form (ET1) and nothing else. I also explained to the Claimant the significance and importance of Case Management Orders and the warnings of potential strike out in the event of non-compliance. He responded that he had not comprehended all this.

2.1 I will not repeat the isolated issues here save to refer to my findings in relation to them;

2.2 I noted that the Claimant had apparently not complied with the directions made by EJ Davies as mentioned above with regard to disclosure and preparation of documentary and statement evidence. He conceded this was the case;

2.3 The first issue to determine was whether the Claimant could establish the quantum of his claim for wages and/or a right to refunded of a payment he made for an HGV training course i.e., how he calculated the quantum thereof;

Facts

- 3 There was no evidence before me from the Claimant.

3.1 The Claimant said he had paid for a course and that he expected a refund but produced no evidence of any agreement, informal or contractual, entitling him to claim such a refund from the Respondent;

3.2 I find that the Claimant himself admitted he had not complied with EJ Davies' orders and his explanation simply put was that he lost internet connection and was unable to respond or take any action pursuant to those

orders;

3.3 Yet the Claimant admitted that his internet connection ceased in late October and lasted until he secured the services of a new ISP in December 2020 but that the Notice of Hearing accompanied by the Case Management Orders was sent on 24 September 2020, so he therefore admitted he must have received them but simply did not follow them, so he thus chose not to do so inexplicably;

3.4 If the Claimant had experienced communication difficulties then I might have expected to see messages sent to him by the Tribunal and/or the Respondent to have bounced back, but no such evidence was before me today, so I deduce that contrary to the Claimant's assertion he did not have technical communications problems and thus was not unaware of what he had to do to present and prepare for his case and today's hearing;

3.5 The Respondents did send their documents and statement to the claimant within the terms of the Orders;

The Law and its Application

5 The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -

"(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or –

(b) the worker has previously signified in writing her agreement or consent to the making of the deduction ..."

6. The Claimant must first establish non-payment to him of the refund he sought and the quantum thereof. Throughout these proceedings the Respondents have denied the claim and its asserted legal basis. On the basis of this rebuttal, and in the absence of evidence in support of the claim from the Claimant before and today, I am unable to accept the Claimant's case about this aspect of his claim at all.

7 Further, I find that EJ Davies Orders have been inexplicably (or insufficiently satisfactorily explained reasons) not complied with. Orders are to be complied with or there is no point in making them – they are after all for all parties' benefits. If the sanction threatened for non-compliance is to have any meaning it must be applied in such a case as this being appropriate when there has been a conscious choice not to comply.

- 9 Therefore, the claims should be struck out for non-compliance with Orders. Further I find that on the merits, the Claimant's claim well is not well founded and fails, so I dismiss it if I had not struck it out for non-compliance with Orders.

Employment Judge R S Drake

Signed 15 January 2021