



EMPLOYMENT TRIBUNALS

Claimant: Mr Arben Dushku

Respondent: Bilberry Entertainment Limited

Heard at: London Central (via CVP) **On:** 18 January 2021

Before: Employment Judge Nicklin

Representation

Claimant: no attendance

Respondent: Mrs S Sokhi (Solicitor)

Note: 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, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face to face hearing because of the COVID-19 pandemic.

JUDGMENT

The Claimant's claim of unfair dismissal and unlawful deductions from wages is dismissed.

REASONS

Introduction

1. By a claim form presented on 1 May 2020, the Claimant brought complaints of unfair dismissal and unlawful deductions from wages in respect of his employment by the Respondent as a bar tender from 5 March 2020 to 22 March 2020.
2. The Claimant says that he was unfairly dismissed by the Respondent when his contract of employment was terminated because of the effect of the COVID-19 pandemic. His claim for wages is in respect of the hours worked for the Respondent in March 2020.
3. The Respondent defends the claim as follows:

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- a. In respect of the complaint of unfair dismissal, the Respondent has written to the tribunal to say that this claim does not have any reasonable prospect of success because, pursuant to section 108 of the Employment Rights Act 1996 (“the ERA”), the Claimant does not have a sufficient period of continuous service to be able to bring a complaint of unfair dismissal; and
- b. In respect of the complaint of unlawful deductions from wages, the Respondent paid the Claimant all monies owing on 22 May 2020 and, by email on 6 June 2020, the Claimant acknowledged receipt of the funds paid. The Respondent attached a chain of emails ending with the Claimant’s acknowledgement on 6 June 2020 to its ET3 Response.

The Claimant’s failure to maintain contact prior to the hearing

4. The Claimant has not communicated with the tribunal since presenting his ET1 claim form.
5. Following an email to the tribunal on 14 December 2020 from Mrs Sokhi addressing the two points above at paragraph 3, the tribunal sent an email to the Claimant with a direction from Employment Judge Spencer to respond by 14 January 2021 stating whether he was withdrawing his claims and/or why his complaint of unfair dismissal should not be struck out.
6. By the hearing of the claim on 18 January 2021, there had been no response to the tribunal’s direction.
7. Mrs Sokhi confirmed that the Claimant has not responded to her in respect of her email to the tribunal on 14 December 2020.

The hearing on 18 January 2021

8. The Claimant did not attend today’s hearing. He has not contacted the tribunal or the Respondent’s solicitor to explain why he is not engaging and/or any reason for not attending.
9. At my direction, the tribunal’s clerk attempted to telephone the Claimant using the number provided in his ET1 claim form. This call went to his voicemail and a message was left for him to join the hearing or email the tribunal to explain. Time was allowed for the Claimant to respond. However, by 10.20am, the Claimant had not joined the hearing and had not sent an email to the tribunal as requested.

Rule 47 of the Employment Tribunals Rules of Procedure 2013

10. Rule 47 provides:

If a party fails to attend or to be represented at the hearing, 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.

11. I have had regard to all of the information available to me at the hearing, which included:
 - a. The ET1, ET3 and the emails between the Respondent and Claimant showing that payment of the Claimant’s wages for March 2020 were paid in May 2020;

- b. The Respondent’s email to the tribunal dated 14 December 2020 and the tribunal’s email to the Claimant dated 7 January 2021 setting out Employment Judge Spencer’s direction.

12. I decided to dismiss the claim for the following reasons:

- a. The Claimant has not engaged with the tribunal at any point since presenting the ET1 claim form on 1 May 2020.
- b. The Respondent’s solicitor and the tribunal have both sent emails regarding this claim to the email address provided by the Claimant on his ET1 claim form. The Claimant has not responded to the tribunal’s direction and has not replied to the Respondent’s solicitor.
- c. The tribunal has tried to contact the Claimant by telephone at the beginning of the hearing and the Claimant has not made himself available for the hearing and not responded by email to the tribunal in the alternative.
- d. It appears more likely than not that the Respondent paid the Claimant the wages owed in May 2020. Box 9.2 on his ET1 claim form makes clear that he is seeking payment for the 3 weeks worked in March 2020. The email from the Claimant to the Respondent dated 6 June 2020 says: “*Thank you Sarah all is done*”, in response to an email sent to the Claimant on 20 May 2020 saying that the Claimant would be paid £638.40 gross on Friday 22 May 2020. Accordingly, it appears unlikely that the Claimant has any wages claim to pursue before the tribunal.
- e. Subject to any exceptions which do not appear to apply in this case (and have not been advanced by the Claimant), the Claimant does not have sufficient continuous service to be able to bring a complaint of unfair dismissal pursuant to section 108 of the ERA.

13. The claim is therefore dismissed.

Employment Judge Nicklin

Date: 18 January 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

 FOR THE TRIBUNAL OFFICE