



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Akyuz

**And**

**Respondent:** *Kaya Opco Limited*

## JUDGMENT

The claim is struck out.

## REASONS

1. By a claim form presented on the 9 February 2020, the Claimant, who was a manager of the Respondent's restaurant, brought complaints of unfair dismissal, a redundancy payment (subsequently withdrawn), notice pay, holiday pay, arrears of pay and other payments.
2. The Respondent says that the Claimant was only employed between 1 April 2019 and 30 September 2019 and does not therefore have the required 2 years' service to bring an unfair dismissal claim.
3. In an email of 31 August 2020, the Respondent complained that the Claimant had not complied with the Orders in the Case Management Order of Employment Judge Norris dated 15 June 2020 and specifically had not provided a revised schedule of loss before 28 August 2020 and had not complied with the requirement to complete mutual disclosure by 17 August 2020.
4. The Respondent explains his failure to communicate because of an issue with his computer and/or email address.

### Open Preliminary Hearing

5. An Open Preliminary Hearing (OPH) to consider the Respondent's application to strike out the claim under Rule 37 (1) (c) or (1) (d) of the Employment

Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Rules) had originally been listed for 19 November 2020 but because of a postponement application by the Respondent was relisted for 8 December 2020.

6. The parties were notified of the postponement of the hearing scheduled for 19 November 2020 and its relisting for 8 December 2020 in a letter sent by email at 15:43 on 18 November 2020. The email address used for the Claimant was a.brhn@protonmail.com but could not be delivered because of the recipient's mailbox being full. This email address represented the most recent one used by the Claimant in his communications with the Tribunal.
7. As the Employment Judge allocated to the hearing scheduled for 8 December 2020, I contacted the parties directly by email on 7 December 2020 to confirm their participation and to ascertain if there was an agreed bundle of documents. I initially used the Claimant's email address above but with the same response. A member of the Tribunal's administrative staff provided me with two alternative email addresses for the Claimant of burhanakyuz@hotmail.co.uk and b.kyz@hotmail.com and I re-sent the email to these addresses without a bounce back.
8. As a result of the Claimant's failure to respond, or join the CVP hearing, I phoned him on the number he had given on his Claim Form (07883086527) but the number rang without being answered before cutting off without providing the facility to leave a voicemail.
9. I therefore considered the Tribunal, and I had, used all reasonable endeavours to notify the Claimant of the hearing with a view to facilitating his participation.
  - a) I considered that the most appropriate course was to make an Unless Order providing for certain steps to be taken by the Claimant by no later than 4 PM on 22 December 2020 failing which the entirety of his claim would be struck out.
- 10.. I reached this decision considering that the Claimant is a litigant in person, that the striking out of a claim is a draconian remedy and on the basis that there would be little real prejudice to the Respondent by adopting option b given that if the Claimant did not comply with the terms of the Unless Order the outcome would be the same.

### **Unless Order**

11. The Unless Order required the Claimant to take the following steps by **4 PM on 22 December 2020** failing which his claim may be struck out under Rule 37 (1) (c):
  - a) provide an explanation as to why he did not participate in that day's hearing;

- b) confirm why he had not actively participated in the proceedings since the Case Management Order of Employment Judge Norris dated 15 June 2020;
- c) provide an updated schedule of loss containing a breakdown of all sums claimed together with details of mitigation, to include all earnings or benefits received subsequent to the termination of his employment by the Respondent;
- d) make disclosure of all documents he intends to rely on in the proceedings, to include those relating to a remedy and mitigation, or confirmation that there are no such documents in his possession which are relevant to his claim; and
- e) to provide confirmation of his current functioning email address and phone number.

### **Subsequent knowledge**

- 12. At 1130 on 8 December 2020, approximately one hour after the CVP hearing had concluded, I was advised by the Tribunal administrative staff that the Claimant was physically in attendance at the Tribunal. It was too late to reconvene the hearing, but the Claimant was nevertheless asked to explain why he attended in person when the Tribunal's letter dated 18 November 2020 provided for a hearing via video.

### **Failure to comply with the Unless Order**

- 13. The Claimant did not comply with the terms of the above Unless Order. The Respondent sent an email on 23 December 2020 requesting that the *Claimant's claims be struck out under Rule 37 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (the Rules)*.
- 14. The Tribunal sent an email to the Claimant on 5 January 2021 requiring him to comply with the terms of the Unless Order by no later than 4 PM on 12 January 2021 otherwise his claims would be struck out. Given the apparent difficulties experienced by the Claimant with his email addresses I also asked the Tribunal administrative staff to send the Claimant the email together with the Respondent's email of 23 December 2020 by post.
- 15. I have confirmed with the Tribunal's administrative staff that the Claimant has not responded, and I therefore consider it appropriate that all his claims are struck out under Rule 37 (1) (c) for non-compliance with an Order of the Tribunal and (d) in that it has not been actively pursued.
- 16. The Claimant has failed to make representations in writing, or has failed to make any sufficient representations, why this should not be done or to request a hearing. The claim is therefore struck out.
- 17. In a letter dated 24 December 2020 the Respondent made a cost application which will be dealt with separately.

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**Employment Judge Nicole**

**Dated 21 January 2021**

JUDGMENT SENT TO THE PARTIES ON

.26/1/21.....

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FOR THE TRIBUNAL OFFICE