



EMPLOYMENT TRIBUNALS

Claimant: Mr P Major

Respondent: Conduit Construction Network Ltd

Heard: Remotely by way of Cloud Video Platform ('CVP')

On: 24 March 2021

Before: Employment Judge Sweeney

Representation

For the Claimant: No attendance
For the Respondent: Peter Collyer, Employment Tribunal Advocate

JUDGMENT

1. The Claimant's claim for payment of outstanding holiday pay is dismissed.

REASONS

1. By a claim Form presented on 24 December 2020 the Claimant brought a complaint for unpaid holiday pay upon the termination of his employment on 20 September 2020.
2. The complaint was resisted by the Respondent.
3. A Notice of Hearing was sent to the parties on 19 January 2021, listing the claim for an 'in-person' hearing on 24 March 2021. Directions for preparation of the hearing were given with the notice of hearing. Further directions were sent to the parties on 12 February 2021. Both parties were directed to prepare witness statements. The Claimant was directed to set out what he was claiming and how he had calculated the amount. The Respondent was directed to prepare a bundle of documents for the hearing.
4. On 23 March 2021 the Respondent emailed the Tribunal, copying the Claimant into the email, asking for the hearing of 24 March to be converted to a remote hearing by video

(using the platform 'cloud video platform'). The Respondent observed that the Claimant had not complied with any directions and had not corresponded with it or responded to its correspondence. It stated that the Claimant did not appear to be pursuing the claim and to save on costs and to avoid having to travel to the Tribunal building asked that it be converted to a remote hearing. The Tribunal tried, without success, to contact the Claimant by phone. I agreed to convert the hearing to a remote hearing.

5. On the morning of the hearing the Claimant telephoned the tribunal to say that he had been informed by the Respondent that the in-person hearing had been converted to a video hearing. He said that he had a missed call from the Tribunal on 23 March but was unable to return the call as he did not finish work until 5.30pm. He told the clerk that he had assumed that today's in-person hearing was not going ahead, that he was at work at the moment and while at work had no access to his emails and nor could he take calls at work. He said that he would not be attending the hearing. He did not ask for an adjournment.
6. The hearing commenced at 10.05am. Mr Collyer appeared on behalf of the Respondent and, for the reasons set out above, the Claimant did not attend. Mr Collyer explained that on 02 March 2019, his colleague had sent by email a copy of the hearing bundle for today's hearing. He also sent a hard copy by post to the Claimant. He explained that they had emailed the Tribunal on 19 March 2021 (copying in the Claimant) attaching the Respondent's witness statement and a copy of the hearing bundle.
7. Mr Collyer invited me to dismiss the Claim under rule 47 of the Employment Tribunal Rules 2013 which provide as follows:

"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."

8. I agreed that it was appropriate to proceed to determine the proceedings today for the following reasons:
 - 8.1. The Claimant knew that there was a hearing listed for today. He told the administration that he assumed that it would not go ahead because of COVID-19. Even if I were to accept that he genuinely assumed this to be the case, it was wholly unreasonable for him to make an assumption in the absence of any communication from the Tribunal to say that it was not to go ahead. The hearing was initially listed in-person because he ticked 'no' in box 7.11 of the Claim Form.
 - 8.2. The Respondent had emailed the Claimant on 02 March 2021 and on 19 March 2021 with documents and a witness statement. He did not acknowledge any correspondence. The email on 19 March 2021 refers in block capitals in bold: **'URGENT – FOR HEARING ON WEDNESDAY 24th MARCH 2021'**.
 - 8.3. The Tribunal emailed the parties on 12 February 2021 giving directions for preparation for the hearing. The Claimant has not complied with any directions. He has done nothing to prosecute or further his claim against the Respondent.

- 8.4. In light of the above, I concluded that his failure to attend the Tribunal for his hearing or to make any advance contact with the Tribunal as to whether the hearing was to proceed was unreasonable conduct. It would be wholly disproportionate to postpone this hearing to another day. The Claimant did not ask for this in any event.
9. Before deciding whether to dismiss the Claim, I considered the information before me:
- 9.1. The Claim Form;
 - 9.2. The Response;
 - 9.3. The bundle of documents prepared by the Respondent;
 - 9.4. The witness statement of the Respondent's Finance Director
10. The Claimant commenced employment with the Respondent on 24 February 2020 on a 6-month contract. Although he was subsequently offered a permanent position he left to take up employment elsewhere, which he commenced on 28 September 2020. He claimed that he was contractually entitled to 25 days plus 8 days holiday under his contract of employment with the Respondent. The Respondent contended that he was contractually entitled to 20 days plus 8 days holiday. The dispute turned on whether he was subject to a probationary period of 3 months or longer and what the parties had truly intended to be the Claimant's holiday entitlement. The Respondent contended that the reference to 3 months was clearly an error. However, in any event, the Respondent had given the Claimant the benefit of doubt and, following termination of his employment, re-calculated his holiday pay on the basis of what the Claimant maintained was his contractual entitlement.
11. I was satisfied on the information before me, in any event, that the Claimant was not entitled to any further payment in respect of accrued but untaken holiday as the Respondent had ultimately paid him according on the more favourable basis as he had sought.
12. Therefore, because of the unreasonable failure of the Claimant to attend today's hearing and to comply with directions and having considered the information before me I considered it appropriate to dismiss the Claim.
13. Mr Collyer had been inclined to make an application for costs arising out of the Claimant's conduct of the proceedings. However, in the end he has reserved his position on this. The Claim has been dismissed in the Claimant's absence – which is why reasons have been provided. It may be that the Claimant seeks a reconsideration of the judgment. If he does and if the Respondent is obliged to respond and/or to attend further hearings, Mr Collyer made it clear that his client would seek to recover the costs of preparing for and attending today's hearing. However, if the Respondent hears no more on the matter from the Claimant, he said there would be no application for costs.

Employment Judge **Sweeney**
Date: 24 March 2021