



EMPLOYMENT TRIBUNALS

Claimant: Mr A Arnold

Respondent: 39 Desserts

Heard at: Cardiff (CVP)

On: 14 May 2021

Before: Employment Judge R Evans

Representation

Claimant: Did not attend

Respondent: In person

JUDGMENT

1. The judgment of the Tribunal is that the Claimant's claim is dismissed pursuant to *Employment Tribunal Rules 2013 rule 47*.

REASONS

1. By Form ET1 received on 3 December 2020 the Claimant, who hails from Cardiff, made a claim against the Respondent for unfair dismissal and arrears of pay. The claim for unfair dismissal was previously struck out for reasons which I will come on to. In terms of unpaid wages, he seeks £2,157.60 in unpaid wages during the COVID-19 furlough scheme. Essentially, he says that is made up of three payments of £719.20. I understand his claim, which is not entirely clear, to be that he is owed wages during the period July, August, September and October 2020. He said he received no communication he was being removed from furlough.
2. The claim is defended by Form ET3 received on 5 January 2021. The Respondent is a desert specialist employing around 10 people. It has its base in Birmingham. Its position

is that the claim is '*mendacious*' and fraudulent. It alleges that he ceased employment on 6 July 2020 and had refused to return to work, insisting on being furloughed due to purported vulnerability. It disputed his role and claimed he failed to provide evidence of his vulnerability. It disputes that the Claimant was not provided with payslips. The Claimant, it says, was dismissed due to a failure to provide evidence to support his being furloughed. It indicated it had not been contacted by ACAS.

3. I can see from the Tribunal file that ACAS was notified on 3 November and issued a certificate on 3 December 2020.
4. By Judgment and Reasons dated 18 March 2021, EJ Brace struck out the Claimant's claim for unfair dismissal, there being no jurisdiction to hear the claim, the Claimant being employed for less than two years and having failed to make any written representations as previously directed. I have seen those Reasons. The balance of the Claimant's claim was to be dealt with on 29 April 2021.
5. On 25 March 2021, Employment Judge Harfield caused the parties to be written to by the Tribunal. It was confirmed that the matter was listed for 9 April 2021 and that the parties were required to send to the Tribunal and to each other any documents and evidence relied upon in support of their respective cases. That is an important point to note.
6. The Hearing on 9 April was adjourned for reasons which are not material to my decision and on 29 April 2021 the matter was relisted for 14 May 2021 with a time estimate of one hour.
7. The case has been timetabled to a Final Hearing to be effective by remote means. This is due to the proceedings having occurred during the COVID-19 global pandemic. Accordingly, today's Hearing was effective via Cloud Video Platform (CVP). Neither of the parties had opposed such a course and I was satisfied that it was necessary, appropriate and in the interests of justice to proceed via CVP.
8. Significantly, the Claimant failed to attend today's Hearing.
9. Mr Asim Hussain, operations director, appeared for the Respondent. He had travelled to Cardiff for the Hearing and was accompanied by Mr Jonathon Pengelly, the Respondent's assistant manager for the Cardiff store.

Non-Attendance of the Claimant

10. The central issue transpired to be the non-attendance of the Claimant to pursue his claim today. In particular I note the following chronology:
 - a. The Form ET1 provided Miss Bunce as the Claimant's point of contact;
 - b. Miss Bunce, purporting to act for the Claimant, wrote to the Tribunal on 8 April asking for the 29 April 2021 Hearing to be postponed due to personal circumstances;

- c. it is noteworthy that Miss Bunce emailed from an iCloud address and had *specifically asked to be emailed at that email address* whilst also asking not to be contacted by telephone;
 - d. Employment Judge Jenkins granted that application and directed that the matter be re-listed;
 - e. the parties were written to by the Tribunal on 29 April 2021 and were told that the Hearing was to be listed on 14 May 2021 at 10:00am via CVP – I have seen that email correspondence which was clearly sent to the correct email address;
 - f. it is noteworthy that Mr Hussain had received that email as he confirmed to me during the course of the Hearing; and
 - g. the parties were sent joining instructions on 11 May 2021 to the same email addresses and again, Mr Hussain received those.
11. After 10:00am this morning and after the commencement of the Hearing, I caused enquiries to be made of the Claimant by the Tribunal staff. I understand that Miss Bunce was eventually spoken to. She indicated that she was in work and that she was not aware of the Hearing. She indicated that the Claimant was too anxious to join the Hearing alone. I caused a second call to be made of Miss Bunce because in her initial call she denied being aware of the Hearing. I caused her attention to be drawn to the numerous emails that had been sent back and forth to the email address she had positively sought to correspond via. The response was less than adequate in my judgment. She denied receiving them. I simply do not accept that having seen the correspondence myself. Indeed, the very email address was used just over a month ago seeking an adjournment. Email carries with it a high degree of certainty of delivery. I have scrutinised the email addresses. There are no typos, the correct address was used. On balance, I am quite satisfied that Miss Bunce received both emails of 29 April and 11 May 2021. Even if am wrong about one, it cannot be that both did not get through to her, especially given the previously successful communication to which I have eluded to.
12. Again, as I have eluded to, the Claimant did not attend and no evidence was filed on his behalf. No supporting documents were filed. There has been ample time to do so. The chronology that I have set out already stands as fact, my having seen the Tribunal file and caused enquiries to be made.

The Employment Tribunal Rules

13. Rules 2 and 47 of the *Employment Tribunal Rules (ETR) 2013 (as amended)* provides,

'Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable

(a) ensuring that the parties are on an equal footing;

- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues;*
- and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

...

Non-attendance

47. 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.'

Conclusions

14. There was no evidence or supporting documentation filed since 25 March 2021 or indeed since the claim was lodged in December 2020. It would have caused further delay and expense had I been minded to adjourn or postpone which would have been wholly disproportionate in the circumstances.
15. I am entirely satisfied that reasonable enquiries were made by the Tribunal in telephoning Miss Bunce, who acted for the Claimant. I was not satisfied with the response.
16. The Tribunal is under significant pressure to progress cases which has been exacerbated by the COVID-19 pandemic. Tribunal time must be used effectively. There are of course occasions (such as the reason for the adjournment on 9 April 2021) which will justify and necessitate the adjournment of proceedings, however inconvenient. However, there should be cogent reasons or an evidence base for doing so. That is not the case here. The Claimant had not filed any evidence or supporting documentation. He has not attended and in my judgment, knew of the Hearing. Mr Hussain urged me not to postpone the Hearing again and dismiss the claim. He told me he had expended considerable resources and had travelled from Birmingham to his Cardiff store to participate in today's Hearing.
17. Having regard to all of those factors, it was, in my judgment, necessary, proportionate and in the interests of justice to dismiss the Claimant's claim as the Respondent invited me to do. In doing so, I considered that to be a fair application of the Overriding Objective and a proper discharge of the functions of *ETR 2013 rule 47*.
18. Accordingly, I refuse the application to postpone the Hearing and I dismiss the claim.

19. If the Claimant seeks reconsideration of this judgment, he must do so within 14 days of it being sent to him. Any such application must be copied to the Respondent and contain an explanation of why the Claimant failed to attend, be represented at, or to make any preparations for the hearing including why he did not file and serve any supporting documentation or written evidence.

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Signed by Employment Judge R Evans

14 May 2021

JUDGMENT SENT TO THE PARTIES ON 17 June 2021

FOR THE TRIBUNAL OFFICE Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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