



EMPLOYMENT TRIBUNALS

Claimant: Mr J Boughton

Respondents: James Cooke, CSL Fleet

Heard: Remotely (by video link) **On:** 6 August 2021

Before: Employment Judge S Shore

Appearances

For the claimant: Ms L Capel, Claimant's Partner

For the respondent: No Appearance

JUDGMENT

The decision of the Tribunal is that:

1. The claimant's claims are all dismissed because of the claimant's failure to attend the hearing pursuant to rule 47 of the Employment Tribunals Rules of Procedure.

REASONS

Introduction

1. The claimant was employed an HGV driver by the respondent from 4 June 2012 until 10 March 2020, which was agreed to be the effective date of termination of his employment. The claimant started early conciliation with ACAS on 26 March 2020 and obtained a conciliation certificate on 16 April 2020. The claimant's ET1 was presented on 27 April 2020.
2. The claimant presented claims of:
 - 2.1. Unfair dismissal;
 - 2.2. Breach of contract (non-payment of notice pay);
 - 2.3. Unauthorised deduction of wages;
 - 2.4. Failure to pay accrued holiday pay; and

2.5. Failure to pay a statutory redundancy payment.

3. I am by no means sure that the correct name of the respondent is James Cooke, CSL Fleet, but I was given no opportunity to make any enquiries of the parties to determine the correct name.
4. The respondent was served with a copy of the claimant's claim on 1 May 2020 at the address that it confirmed in the response filed on 4 June 2020. The respondent was sent a notice on 28 August 2020 to advise that its response had been rejected under rule 18 because it was received more than 28 days after it had been sent a copy of the claim.
5. The notice advised the respondent of its options in respect of the rejection of its response, but it did not engage with the Tribunal again until 16:55 on 5 August 2021, when Steven Cairns of MV Commercial Group emailed the Tribunal and asked to be contacted as he was not aware of the claimant's claim. No explanation was offered as to what relationship (if any) that Mr Cairns had with the respondent in this case. In any event, rule 21 sets out the consequences for a respondent whose response has been rejected: it is only entitled to notice of any hearings and decisions of the Tribunal, but unless and until an extension of time is granted (which has not happened in this case), it is only entitled to participate in any hearing to the extent permitted by the Judge.
6. No one appeared at this hearing on behalf of the respondent.
7. The parties were advised of the date of this hearing on 27 September 2020. It was initially listed to take place in person at the Tribunal in Reading. On 30 July 2021, the file was reviewed by an employment Judge and converted to a video hearing. An email was sent to the claimant and respondent at 15:03pm on 30 July 2021 to advise them that the hearing would take place by video and that details of how to log on to the hearing would be sent in due course.
8. The email to the respondent bounced back with a message that the domain did not exist.
9. A further email was sent to the parties at 17:13pm on 5 August 2021, advising them of the log on details for today's CVP hearing. Again, the email to the respondent bounced back.

Issues

10. I was not able to agree the issues in the case with the parties, as neither attended.

Housekeeping

11. The parties did not produce any documents or witness statements.

Hearing

12. I joined the hearing just before 10:00am. None of the parties were in the CVP room, or in the lobby. My clerk advised me that the claimant's partner, Linda Capel, had

logged in and advised that the claimant was having difficulty connecting. Ms Capel's own connection was then lost.

13. I left the room and asked my clerk to contact me when Ms Capel re-joined. I re-joined at 10:02am.
14. Ms Capel advised me that the claimant was at work and had no telephone signal to log in. She said that she was unable to contact him. She confirmed that the claimant was working as an HGV driver.
15. Ms Capel confirmed that the claimant had received the notice of hearing dated 27 September 2020 and had intended to attend the in-person hearing. However, when he received the notice that the hearing was to be by video, he decided to go to work. He thought it would be OK to ring in by phone from work.
16. Ms Capel did not know when the claimant would be available and said that he couldn't not go to work. She asked if it was possible to postpone the hearing to another day. I refused this request as the claimant had been aware of the hearing date for nearly a year and had no good reason for failing to attend. It would not be in furtherance of the overriding objective of the Tribunal to deal with cases fairly and justly to allocate more resources to a new hearing when the claimant had made no reasonable effort to attend this hearing.
17. My decision was influenced by the fact that there are a huge number of cases waiting to be heard by the Tribunal, so others would have their cases further delayed if I was to grant an adjournment of this case to another date.
18. If a claimant fails to appear or be represented at the hearing, the Tribunal may either dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, however, I have to consider any information which is available to me, after any enquiries that may be practicable, about the reasons for the claimant's absence.
19. If contact is made with the absent party, and he indicates that he does intend to appear, and is able to get to the tribunal within a reasonable time, the tribunal will ordinarily stand the case back until he arrives. However, in this case, there was no indication of whether or if the claimant would be able to attend the hearing at any time today.
20. I find that the claimant was aware of the date and time of the hearing and simply chose to go to work. On that basis, I find that there is no justice in granting an adjournment or putting the case back, as there was no indication that he would ever be available on the date of the hearing.
21. The claimant's claims are dismissed.

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

Case Number: 3304219/2020

Employment Judge Shore
6 August 2021

Sent to the parties on:

27/8/2021

For the Tribunal Office:

N Gotecha