



EMPLOYMENT TRIBUNALS

Claimant: Christopher Bromilow

Respondent: Albany Park Ltd

Heard at: Watford (by cvp)

On: 06 August 2021

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Colin Hall, a director of the Respondent

JUDGMENT

1. The claim is dismissed.
2. The counterclaim is dismissed.

REASONS

1. The claim was filed on 12 August 2020, almost a year ago.
2. On 28 November 2020 standard directions were given, including for disclosure of documents (January 2021) and exchange of witness statements (22 March 2021). This included the standard wording *“No additional witness evidence may be allowed at the hearing without permission of the Tribunal”*.
3. A hearing listed for 21 April 2021 was adjourned, on the day, and fresh case management directions given, the earlier ones having not been complied with.
4. The Claimant did not comply with these directions and on 19 May 2021 the Respondent emailed the Claimant:

“The case management Order issued by the tribunal during the hearing of the 21st April was that we directly send each other any documents we wish to refer to in the hearing by no later than 5th May. Further, your submission

to us should also include a schedule of loss. We (as Respondent) are then supposed to produce a combined file of all relevant documents by 19th May (today) in advance of collection of witness statements by 26th May. To date we have received nothing from you.”

5. They also sought a strike out order on the same day, which on 10 July 2021 an Employment Judge refused.
6. On 27 July 2021 the Respondent repeated that request, stating that there had still been no compliance by the Claimant, and on the same day an Employment Judge refused that request, stating that the application could be made at the hearing today.
7. On 27 July 2021 the Claimant emailed the Respondent a document called a “*timeline*”.
8. The Respondent prepared a bundle of documents and a witness statement from Colin Hall, dated 30 July 2021, and supplied them to the Claimant and to the Tribunal.
9. The Claimant emailed some documents to Colin Hall in the evening of 05 August 2021 (yesterday evening) and some more this morning. A witness statement was not among them.
10. The Claimant did not join the hearing at 10:00 am and I telephoned him. He said that he had received the details of the hearing, but not the time. He said he had emailed to ask, but had no reply. I said it was now, and he logged in at 10:20.
11. I enquired whether there was any reason why he had not complied with the directions. He said that his partner had health issues (and as this judgment goes on a public website I record only that he provided detail). This would not, however, have prevented him complying with case management orders for over 6 months.
12. The claim is, in essence, that he was guaranteed a bonus on top of his basic salary, and that whatever his performance he was entitled to it, and it had not been paid.
13. He had provided no documentary or other evidence in support of his claim. The burden of proving his claim lays upon him, on the balance of probabilities. It was not fair to the Respondent to provide some documents on the day of the hearing, or to give oral evidence without a witness statement exchanged in advance. Nor did the documents supplied seem likely to have any probative value, as he had not supplied anything about the bonus scheme.
14. I decided that the Claimant could not prove his claim on the balance of probabilities in the absence of documentation, and so dismissed it.
15. I would also have dismissed the claim under Rule 37(b) as this was an unreasonable way to conduct the claim, under Rule 37(c) for failure to comply with Tribunal orders (after 2 strike out applications had been refused) and Rule 37(d) as it had not been actively pursued.

16. The Respondent had counterclaimed for overpayment of commission. That would be a contractual matter. The bundle of documents they had prepared did not include the contract of employment or the bonus scheme. Colin Hall indicated that while he had a Word copy of the contract the signed copy could not be located, and he had not thought that he should include the electronic unsigned version. He indicated also that the claim was only pursued as an offset to any liability to the Claimant.
17. The Respondent cannot prove its claim without the evidence to show liability. There was no evidence about that in the witness statement of Colin Hall, and no documentary evidence. Accordingly, I dismiss the counterclaim as well.

Employment Judge Housego

Date 06 August 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

1/9/2021

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FOR THE TRIBUNAL OFFICE