



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Francis

**Respondent:** Stripestar Limited

**HELD AT:** Manchester (by CVP)

**ON:** 17 August 2021

**BEFORE:** Employment Judge Johnson

## REPRESENTATION:

**Claimant:**

did not attend

**Respondent:**

Mr R Kohanzad  
(counsel)

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim is dismissed as the claim is one which the Tribunal has no jurisdiction to consider.

# REASONS

## Introduction

1. The claimant was employed by Stripestar Limited from 3 March 2019 until some time in 2020 when her employment was terminated.
2. She presented a claim to the Tribunal on 4 March 2021 following a period on the same date with ACAS. She brought complaints of unfair dismissal, breach of contract and unpaid annual leave.

3. The respondent presented a response resisting the claim and argued that the Tribunal had no jurisdiction to hear the case as the effective date of termination was no later than 28 September 2020 and a claim form presented (or ACAS notified of early conciliation), by 27 December 2020.
4. The Tribunal had listed the case for a final hearing today with a length of 3 hours. The Notice of Hearing also required the claimant to provide a witness statement no later than 4 weeks before the final hearing. Despite being reminded by the respondent, the claimant failed to provide a statement for the hearing. The respondent prepared a hearing bundle which was available to the claimant and the Tribunal. The claimant did not attend the hearing today.

### **Proceeding with the hearing in the claimant's absence**

5. In her claim form, the claimant indicated that she wished to be contacted by email and the Tribunal used the correct email which she provided in this document, in all subsequent correspondence.
6. She was sent the Notice of Hearing on 28 June 2021 by the Tribunal. They sent further emails on 6 August 2021 concerning the hearing bundle and 16 August 2021 concerning the joining details for today's CVP hearing.
7. The claimant did not attempt to join the hearing today and failed to provide details of any difficulties that she was experiencing or any application to postpone the case. Concerned that she was not aware of the hearing, the designated hearing clerk called her using her mobile phone number and the claimant said she was in work, would need to speak with her boss about joining the hearing and then put the phone down without warning. A further attempt to call her was not answered. The clerk sent an email to the claimant at 10:14 and requested that she join the hearing by 10:20, failing which the hearing would begin. There was no reply and there was no reason to assume that she could not access these emails on her mobile phone.
8. I therefore began the hearing and Mr Kohanzad explained that his instructing solicitors requested by email, that the claimant send her witness statement on 27 July 2021 and sent a further reminder to her, but without any reply.
9. Applying Rule 47 concerning non-attendance of a party at a hearing, I considered that the hearing should proceed in the claimant's absence. This was done having first considered the available information. I was satisfied that the claimant was aware of the hearing, and he been aware for some time. I was also satisfied that she had no intention of attending the hearing today. In reaching this decision, I took account of the relevant provisions of the Equal Treatment Bench Book concerning unrepresented parties and the overriding objective under Rule 2. I was satisfied that it was in the interests of justice to proceed with the hearing today.

### **The question of jurisdiction and whether the claim could be considered**

10. As jurisdiction had been advanced as an argument in the grounds of resistance, I heard submissions concerning this matter.

11. The claimant had failed to confirm her effective date of termination in the claim form and had not provided her witness statement for use at the hearing. I therefore accepted the respondent's argument that the claimant was dismissed by no later than 28 September 2020. On this basis, all of the 3 complaints identified by the claimant, should have been presented to the Tribunal by no later than 27 December 2020, or at the very least, ACAS should have been notified of a potential claim.
12. The claimant did not notify ACAS until 4 March 2021 and an early conciliation certificate was issued the same day. The claim form was presented on 4 March 2021 too. On this basis, the claim form had been presented out of time and the Tribunal was required to reject the claims as the Tribunal had no jurisdiction to consider them. As the claims had already been accepted by the Tribunal and allowed to proceed to final hearing, I simply decided to enter judgment dismissing the claims but explaining that it related to the absence of jurisdiction.
13. It should also be noted that the claimant's complaint of unfair dismissal appeared to have been presented despite her not having worked continuously for at least 2 years before the effective date of termination. Under section 108 of the Employment Rights Act 1996, it is likely that this complaint would have been rejected, even if it had been presented to the Tribunal in time. However, it was not necessary to consider this matter given the absence of jurisdiction.

#### **Further matters to consider**

14. Although the claimant had identified the respondent as 'Pendragon plc', Mr Kohanzad referred me to the form ET3 and grounds of resistance and the correction of this name to 'Stripestar Limited' as the correct respondent's name. In the absence of any objection by the claimant, I ordered that the name be changed accordingly.
15. Finally, Mr Kohanzad said that his instructing solicitors were likely to make an application for costs to be paid in accordance with Rule 76(1)(a) or (b), because of the claimant's failure to engage in these proceedings, her failure to give any warning of her non-attendance today or to make an application for a postponement and because they believed the claim never had any reasonable prospects of success. Overall, the respondent felt that the claimant had behaved unreasonably in how she proceeded with her case.
16. I reminded Mr Kohanzad that in accordance with Rule 77, I would need to ensure that the claimant had reasonable opportunity to make representations concerning such an application. He therefore confirmed that his instructing solicitors would consider their position and if appropriate, make an application for costs within the 28-day period provided by Rule 77. Although the figure claimed had not been finally determined, it was likely to include counsel's fees of today which amounted to £1,250 +VAT.

#### **Conclusions**

17. Accordingly, the claimant's claim is dismissed because the Tribunal has no jurisdiction to consider them.

18. The following case management orders are also made:

**Case Management Orders  
(made in accordance with the Tribunal's Rules of Procedure)**

- a) The respondent's name is changed from 'Pendragon plc' to 'Stripestar Limited'.
- b) The respondent shall consider whether it wishes to make an application for a costs order under Rule 76 and if so, shall make this application within 28 days of the judgment being sent to the parties in accordance with Rule 77.

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Employment Judge Johnson

Date 17 August 2021

JUDGMENT SENT TO THE PARTIES ON

3 September 2021

FOR THE TRIBUNAL OFFICE