



EMPLOYMENT TRIBUNALS

Claimant: Mr L Tordoff Wheeler
Respondent: Rogerthorpe Manor Hotel
Heard at: Leeds ET (via CVP)
On: 13 October 2021
Before: Employment Judge M Rawlinson (sitting alone)

Representation

Claimant Did not attend
Respondent Richard Metcalfe (owner)

JUDGMENT

The Judgment of the Tribunal is that:

The claimant being neither present nor represented at a point in excess of one hour after the time set for Final Hearing and there being no reply to emails, or any answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with him, and the claimant not having otherwise communicated with the Tribunal, the Tribunal dismisses the claimant's claim in terms of Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. The claimant lodged a claim for unfair dismissal notice pay and holiday pay on 1 June 2021 which the respondent contested and defended. The claimant's claim for unfair dismissal was struck out on 9 August 2021 due to insufficient length of service. The claimant's other complaints were not affected by that judgment.
2. A final hearing was originally set for 24 September 2021 but was adjourned at the request of the respondent and with the agreement of all parties on 22 September 2021.
3. On the same date, 22 September 2021, a Notice of Hearing was sent to all parties including the claimant. That Notice indicated that a hearing was to take place via CVP on 13 October 2021 at 10am. Enquiries made by the Tribunal on the day of the final hearing (13 October 2021) confirmed that the Notice was indeed sent to the claimant. It is also worthy of note that the respondent, who was also sent the same Notice via the same method and at the same time as the claimant, was in attendance at that hearing.
4. Following commencement of the hearing on 13 October 2021, the case was stood down for a period of time to make reasonable enquiries and to enable the claimant to be contacted both by telephone and email. An email was sent to the claimant using the email address that the Tribunal had on file, and indeed this was an address from which the Tribunal itself had previously received emails from the claimant. The claimant was also telephoned on his mobile telephone but did not answer. A message was left for him to the effect that final hearing was listed for today and was indeed in progress.
5. Following those efforts, the case was again stood down until just after 10:30am in order to give the claimant further time and a further opportunity to attend, or indeed to communicate with the Tribunal in the event (for example) he was simply running late, having technological problems or similar. The case was called and again at 10:35am whereupon the claimant was still not in attendance and had still not responded to either the telephone call and message, or the email that had been sent to him.
6. At that stage, further enquiries were made via Mr Metcalfe who appeared on behalf of the respondent. He had had no contact recently with the claimant with respect to the forthcoming hearing, but did indicate that as per the ET3 response form, the claimant had been paid and had acknowledged receipt of monies representing 12 days worth of outstanding holiday pay. In that regard he stated "I am not sure why we are here".
7. The Tribunal considers that the clear import of those comments is that the respondent feels that whatever issues that had existed between the parties have now been resolved, effectively rendering the claimant's original claim otiose. I have not been provided with any information to counter that assessment of the situation.

8. Having been appraised of the relevant provisions and Rules, Mr Metcalfe did not make any further submissions to the Tribunal to whether the case should proceed in the claimant's absence or should be dismissed.
9. By 10:50am, when the Tribunal retired to fully consider matters, it remained the case that no contact had been made by the claimant with the Tribunal in connection with the hearing. An analysis of the relevant correspondence revealed that the claimant had not been in contact with the Tribunal since 17 August 2021.
10. At approximately 11.05am, having considered the overriding objective and (as it must, pursuant to Rule 47) any information available to it, and after making any enquiries that were in the circumstances practicable about the claimant's absence, on the assumption that by his unexplained non-attendance the claimant sought to communicate an intention not to insist upon or pursue his claim, the Tribunal dismissed the claim in terms of Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
11. In particular, as well as balancing all relevant factors, the Tribunal took particular account of the information provided by the respondent to the effect that the matters may have in fact been resolved between the parties prior to the Final Hearing. As well as considering an adjournment of the case, the Tribunal did also consider whether it was appropriate to proceed with the hearing in the absence of the claimant. However, Tribunal considered that it was inevitably the case that such a course would have led to dismissal of the claimant's claim in any event. In those circumstances the Tribunal considered that dismissal was the most appropriate course.
12. If the Tribunal is wrong in the assumption that, by his unexplained non-attendance, the claimant sought to communicate an intention not to insist upon or to pursue his claim, it will be open to the claimant to consider proceeding by way of Application for Reconsideration of the Judgment.

Employment Judge M Rawlinson

Date: 13 October 2021

Sent to the parties on:

Date: 22 October 2021

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