



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr G Raynes

AND

Respondent

Advance Accounting Solution
Limited, Cobham Mission
Systems Wimborne Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol (by video, VHS) **ON** 10 November 2021

EMPLOYMENT JUDGE **Bax**

Representation

For the Claimant:

For Advance Accounting Solution Limited :

For Cobham Mission Systems Wimborne Limited:

Did not attend

Mr S Critchley (solicitor)

Did not attend

JUDGMENT

The Claimants claims (understood to be for unpaid wages, breach of contract, holiday pay, overpayment of tax and other payments) are dismissed.

REASONS

1. In this case the Claimant, Mr Raynes, brought a monetary claim of unpaid wages, accrued but unpaid holiday, breach of contract in relation to expenses and in relation to overpayment of tax and national insurance notice.

Procedural background

2. On 9 October 2020 the Claimant entered into early conciliation via ACAS. The name of the Respondent on the Early Conciliation Certificate was 'Advance Accounting Solution Limited, Cobham Mission Systems Wimborne Limited'. The address of the Respondent was detailed as, "2 Bretton Hall Offices, Chester Road, Bretton, Chester CH4 0DF", which was the address of Advance Accounting Solution Limited.
3. On 18 December 2020, the Claimant presented a claim against two Respondents: (1) Advance Accounting Solution Limited, Cobham Mission Systems Wimborne Limited and (2) Cobham Mission Systems Wimborne Limited.
4. Employment Judge Livesey considered the claim and directed that the claim against the Second Respondent should be rejected and accepted the claim against the First Respondent, because it was the first legal entity identified in the claim form and early conciliation certificate. Rule 4 of the Early Conciliation Rules of Procedure, as set out in the Employment Tribunals (Early Conciliation Exemptions and Rules of Procedure) Regulations 2014 provided, "If there is more than one prospective respondent, the prospective claimant must present a separate early conciliation form under rule 2 in respect of each respondent or, in the case of a telephone call made under rule 3, must name each prospective respondent.
5. The decision was communicated to the parties on 29 January 2021, although in it was expressed to have been made by Employment Judge Bax. The Claimant was told that the claim against Advance Accounting Solution Limited, Cobham Mission Systems Wimborne Limited had been accepted and the claim against the second Respondent rejected. The Claimant was informed that the Tribunal had issued against the First Respondent as it was the first legal entity identified in the claim form and early conciliation certificate. This therefore appeared confusing as both companies' names were said to be the First Respondent.
6. The claim was not served on Cobham Mission Systems Wimborne Limited at its address and it appeared that it did not have notice of the claim.
7. Advance Accounting Solution Limited filed a response, stating it had never employed the Claimant and had no records of him being an employee or client of the business. It described itself as an accountancy and bookkeeping business. No response was filed by Cobham Mission Systems Wimborne Limited.
8. On 17 May 2021, Employment Judge Dawson asked the Claimant to comment on the response that had been filed. On 18 May 2021, the Claimant said that the First Respondent was part of a group of companies and Cobham Mission Systems utilised the group to arrange his

employment. He said it was part of an IR35 arrangement, with him being paid from Cobham through this group of companies.

9. The Claimant was then informed that the claim would continue against the named respondents (plural).
10. A notice of hearing, with associated directions, was sent on 22 June 2021 addressed to the Claimant and Advance Accounting Solution Limited, Cobham Mission Systems Wimborne Limited. The parties were informed that the hearing would be by video and if they objected they should do so by return.
11. On 30 September 2021, the Claimant e-mailed the Tribunal asking to suspend the order in relation to a calculation of his loss. He said that the employer (Cobham Mission Systems Wimborne Limited) had utilised an umbrella company (Advance Contracting Solutions Limited) to employ the Claimant and it was difficult to assess his losses and they were the only party that had full visibility to the division of earnings and taxation.
12. On 9 November 2021, the Tribunal e-mailed both parties asking for their contact details for the video hearing. The solicitor for Advance Accounting Solution Limited replied and said that the notice of hearing had gone into his spam folder, and he had been unaware of the hearing, and they had not received anything from the Claimant and were unable to defend the claim due to the actions of the Claimant.
13. On 9 November 2021, the Tribunal office attempted to telephone the Claimant, but he did not answer. At 1601 the Claimant e-mailed the Tribunal and said he objected to a video hearing and wanted it to be in person, but gave no reason. He asked for a new date.
14. I asked for the Tribunal office to send the following e-mail, which was sent at approximately 1710:

“The claimant’s e-mail of 9 November 2021 timed at 1601 has been referred to Employment Judge Bax, who directs as follows:

The claim was listed for a video hearing on 22 June 2021 and the parties were required to make any objection to that course of action by return. The Claimant should attend the video hearing to explain his objection. To attend it is necessary that the parties provide their contact details as reminded earlier today by the Tribunal office. If a party does not attend there is a risk that the hearing will proceed in their absence.

It is also noted that none of the parties have provided the agreed bundle of documents or any witness statements to the Tribunal. The Claimant also

does not appear to have provided his written calculation of the value of his claim. The parties must send any such documents to the Tribunal by return.”

15. At 0945 on 10 November 2021, the Claimant spoke to the VHS hearing officer by telephone and said he could not attend and had explained it to the courts. He gave no reason for his non-attendance to the hearing officer.
16. I checked with the Tribunal and Court staff for any messages received. None of the staff members were aware of a telephone call from the Claimant after his e-mail of 9 November 2021.
17. The Tribunal office attempted to telephone the Claimant at 0950 on 10 November 2021, but he did not answer. An e-mail was sent to the Claimant at 0954 informing him that the message from the video hearing's team that he was unable to attend had been received and that the only reason the Tribunal was aware of was the e-mail at 1601 on 9 November. The Claimant was warned that if he did not attend, the hearing might proceed in his absence.
18. I waited until 1005 to see if the Claimant would attend, which he did not. The Tribunal telephoned the Claimant, and he did not answer the call.
19. After problems with Mr Critchley's video connection, Mr Critchley joined the hearing by telephone.

Postponement application

20. It was considered that the Claimant's e-mail of 9 November 2021 could be an application to postpone the hearing and Mr Critchley was invited to make submissions. A postponement was objected to on the basis that the Claimant was aware of the hearing date, it was his case and he had not provided any evidence in relation to his claim.
21. After considering the Respondent's submissions the application to postpone was refused. The Claimant had not provided any reason as to why he could not attend the hearing. The Claimant's objection to the video hearing did not provide any reason for that objection, other than he did object. The Claimant was aware that the hearing would be by video from the notice of hearing dated 22 June 2021 and that if there was an objection it should be by return. The Claimant e-mailed the Tribunal on 30 September 2021 in relation to the case management directions contained in the notice of hearing and I was satisfied that he was fully aware of the hearing date. The Claimant had not provided any documentation, namely a witness statement, calculation of loss or documents in support, to the Respondent or Tribunal in support of his claim. I was satisfied that the Claimant was

aware of the hearing, attempts had been made to see if he would join and no explanation was provided as to why he could not attend. Taking into account the overriding objective, in particular ensuring that the parties are on an equal footing, delay is avoided and expense is saved and the Presidential Guidance on seeking a postponement the application to postpone was refused and the case proceeded in the Claimant's absence in accordance with rule 47.

Determination of the claim

22. The Claimant had not provided any evidence in relation to his claim. The claim form did not explain the contractual relationships he had with Advance Accounting Solution Limited or Cobham Mission Systems Wimborne Limited. The claim form was vague in terms of what the Claimant was claiming.
23. In order to bring the claims, the Claimant needed to establish that he was a worker or an employee within the meaning of s. 230 of the Employment Rights Act 1996 so that the Tribunal had jurisdiction to hear his claims and in respect of claims of breach of contract he needed to be an employee. Advance Accounting Solution Limited expressly denied that the Claimant was an employee or client of theirs. The Claimant adduced no evidence to support his contention that he was an employee or worker of Advance Accounting Solution Limited and I was not satisfied that he was. Even though the claim against Cobham Mission Systems Wimborne Limited had been rejected, there was no evidence that the Claimant was an employee or worker of that company, and I was not satisfied that he was. In any event the Claimant adduced no evidence that he had suffered a loss of wages, not been paid for expenses due, overpaid tax or was due any accrued but outstanding holiday and he failed to prove any loss.
24. The Claimant failed to prove that he had the requisite contractual relationship with the Respondent or that he had suffered a loss and the claim was dismissed.

Employment Judge Bax
Dated: 10 November 2021

Judgment sent to parties: 2 December 2021

FOR THE TRIBUNAL OFFICE