



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Phipps

v

Hartwell Plc

Heard at: Watford

On: 14 October 2021

Before: Employment Judge Bloch QC

Appearances

For the Claimant: Did not attend and was not represented

For the Respondent: Mrs G Forbes, Company Secretary

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote hearing not objected to by the parties. The form of remote hearing was by CVP. A face to face hearing was not held because it was not practicable and no one requested the same."

JUDGMENT

1. Pursuant to Rule 47 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013, the claimant's sole remaining claim (of unauthorised deduction from wages) is dismissed upon the claimant's failure to attend or be represented at the hearing.

REASONS

1. At a case management hearing on 26 June 2020 Employment Judge Heal defined the issues authoritatively including a claim for unauthorised deduction from wages: ie. "11.3 Did the respondent deduct company car tax for one month when the claimant did not have a company car?"
2. At a preliminary hearing before Employment Judge Milner-Moore, on 19 April 2021, having found that the claimant was not a disabled person within the meaning of s.6 of the Equality Act 2010, the Judge ordered that the sole remaining claim of unlawful deduction from wages was to be determined at

a final hearing on 14 October 2021, starting at 10am. The judge recorded that during the hearing the claimant suggested that there were other deductions a out which he wished to complain. Those matters did not then form part of the complaint of unlawful deduction from wages so the claimant would have had to make application to amend to add those. The Judge accordingly made an order that if the claimant wished to make an application to amend, any such application should be made in writing to the tribunal and copied to the respondent by 14 May 2021. The judge further directed what that application should contain by way of detail. Further directions were made including a provision by the claimant of a schedule of loss by 14 May 2021 and on or before 28 May 2021 the claimant and the respondent were to exchange lists of documents. By 9 June 2021 the parties were to agree what documents were to go into the final hearing bundle and by 16 June 2021 the respondent was to paginate and index such bundle. Witness statements were to be exchanged on or before 9 July 2021.

3. I have seen an email by Mrs Forbes to the tribunal dated 7 June 2021 together with an attached email chain. In her email of 17 May 2021 to the claimant, Mrs Forbes noted that the claimant had not applied to amend his claim to add any further claims for unlawful deduction from salary. Mrs Forbes wanted to make sure whether the unlawful deduction from salary claim would be going ahead on 14 October 2021. She pointed out that the schedule of loss had not been filed by 14 May 2021 so that (she said) that she did not have knowledge of the claim either as to when the unlawful deduction took place nor the purported amount. If the claimant intended to proceed with the claim Mrs Forbes asked him to supply this information in a schedule of loss.
4. In an email of 26 May 2021 following a further email from Mrs Forbes of 26 May 2021, the claimant said that he did not understand what Mrs Forbes was saying and that once he had received legal advice perhaps he would have a better understanding. There followed Mrs Forbes' email of 7 June 2021, to which I have referred, seeking further directions from the tribunal and, if necessary, an unless order. Thereafter (I am told by Mrs Forbes) t she approached the tribunal with a strike out application. This came before a Judge earlier this week but, given the imminence of the hearing, the Judge declined to make an order.
5. The claimant did not join the video hearing and various attempts were made by my clerk to contact him. The mobile number provided did not appear to work and the landline number provided was apparently the number of the claimant's father. I was told by the clerk that the father (who communicated with the clerk) did not know whether the claimant intended to attend today. He had been unable to contact his son.

6. Apart from the claimant having been informed of today's hearing at the above-mentioned case management hearing (as I am told by Mrs Forbes) the hearing date appeared in the order thereafter made by the judge (and was further referred to by email to the claimant) I am told by my clerk that a notice of hearing was emailed to him on Tuesday this week to the email address provided by the claimant and the CVP details were emailed to him yesterday.
7. I am therefore satisfied that the claimant was fully aware of today's hearing. I am also told by my clerk that there is nothing in the file to indicate reasons for the claimant's absence today.
8. In all the circumstances I conclude that the claimant does not intend to proceed with his unlawful deductions claim. Some support for this is to be derived from the claimant's conduct since the hearing before Judge MilnerMoore. He has apparently been seeking to "appeal" against the decision that he was not disabled and, indeed, reference is made to that in Mrs Forbes letter to Mr Phipps dated 26 May 2021. In that communication she pointed out that any appeal lay to the Employment Appeal Tribunal. I conclude that it is likely that the claimant is not interested in pursuing what appears to be a relatively small part of his claim.
9. In all the circumstances, it seemed appropriate to me to dismiss the claim pursuant to Rule 47 of the Employment Tribunal's Constitution and Rules of Procedure) Regulations 2013. The other alternative referred to in that rule, namely of proceeding with the hearing in the absence of the party, seemed inappropriate. The respondent has been unable to elicit from the claimant any proper details of his claim and the claimant has failed to amend the claim to clarify it. In those circumstances the hearing could not proceed today.

Employment Judge Bloch QC

Date: 16 November 2021

Sent to the parties on:
26 November 2021

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For the Tribunal Office