



EMPLOYMENT TRIBUNALS

Appellant

Respondent

Ms C Humphrey v

The Commissioner for HM Revenue & Customs

JUDGMENT

1. The Appellant's appeal is dismissed.

REASONS

Procedural History

1. On 18 May 2020, the Respondent issued a notice of underpayment to the Appellant under the National Minimum Wage Act 1998 ("**the Act**") in relation to pay to Jason Gilbert covering the period from 23 July 2016 to 13 April 2018. The total arrears stated to be due was £31,634.37 and there was a penalty of £20,000.
2. On 4 June 2020, the Appellant submitted an appeal to the Employment Tribunal against this notice of underpayment. The only ground of appeal was that Mr Gilbert was allegedly not employed by the Appellant.
3. Following a preliminary hearing on 20 August and 7 October 2021, the Tribunal gave judgment that Jason Gilbert was a worker in the service of the Appellant pursuant to section 54 of the Act.
4. The Case Management Summary sent to the parties on 9 November 2021 recorded the position of the Respondent as being that the only grounds of appeal related to the issue of worker status. It recorded the position of the Appellant as being that she acknowledged this to a degree but was not in a position to consent to the appeal being dismissed, in particular given her shock at the determination that Mr Gilbert was a worker in her service. However, that she recognised that she may have to submit to a judgment that the appeal be dismissed.
5. As the hearing has only been listed as a preliminary hearing, the Appellant was directed to write to the Tribunal by 21 October 2021, copied to the Respondent, stating why the Tribunal should not dismiss the appeal.

6. The Appellant's adviser, Peter Fisher, wrote to the Tribunal on 20 October 2021 about a potential appeal but did not address the question of why the Tribunal should not dismiss the appeal.
7. By email of 25 October 2021, the Respondent stated that there were no further issues to determine and judgment should be issued. By email of 16 November 2021, the Respondent sought a dismissal of the full appeal. By letter dated 24 November 2021, the Tribunal asked the Appellant to respond to the Respondent's email dated 25 October 2021 within seven days. The Appellant did not do so.
8. As recorded in the Case Management Summary, given my involvement in the proceedings, the parties asked that I deal with this correspondence on the papers.

Conclusions

9. The only ground of appeal put forward by the Appellant was the issue of worker status which was resolved in favour of the Respondent. The Appellant was thereafter twice given the opportunity to state why the Tribunal should not dismiss the appeal. She did not do so.
10. Even if Mr Fisher's email of 20 October 2021 were to be read as asserting that the appeal should not be dismissed because the Appellant was intending to appeal the judgment that Mr Gilbert was a worker under the Act, this would be insufficient reason not to dismiss the appeal.
11. As there are no further grounds of appeal before the Tribunal and the Appellant has not put forward any basis on which the appeal should not be dismissed, the judgment of the Tribunal is that the appeal is dismissed.

Employment Judge de Silva QC

Date: 24 March 2022

Sent to the parties on: 25 March 2022

For the Tribunal Office