



EMPLOYMENT TRIBUNALS

Claimant: Mr A Smith-Morse

Respondent: Haywards Airport Travel Services Limited

Heard at: Bristol VHS

On: 14th March 2022

Before: Employment Judge Lang

Representation

Claimant: Not in attendance

Respondent: Not in attendance

Judgment

1. The claim is dismissed under Rule 47.

REASONS

1. The matter was listed for a two day final hearing to take place remotely via VHS on 14th and 15th March 2022 commencing at 10.00am.

2. This is Mr. A Smith-Morse's claim, by way of an ET1 received by the tribunal on 6th January 2021. Mr. Smith-Morse has made claims for: unfair dismissal; payment of a redundancy payment; wrongful dismissal and a claim for outstanding holiday pay. The Respondent is Haywards Airport Travel Services Limited, they by way of ET3 defend the claims. Neither party has been legally represented throughout the proceedings. Neither party has attended the hearing today nor was represented and neither party has made an application for an adjournment.
3. There is a dispute between the parties as to when Mr. Smith-Morse's employment ended. Mr. Smith-Morse asserts this was on 4th October 2020, the Respondent asserts that it was in June 2020. If the Respondent is correct the claims brought may be out of time.
4. On 18th September 2021 at 12.06 a notice of hearing was sent to the parties listing the case for this final hearing. That notice expressly provided that the hearing would take place by video hearing, commencing at 10am on 14th March 2021. Annexed to that notice of hearing was the case management order and timetable. Of the directions provided in that order the following are relevant:
 - a. Mr. Smith-Morse was to set out in writing to the tribunal confirmation of what remedy he was seeking by 18th October 2021.
 - b. A bundle was to be prepared by the Respondent by 24th January 2022.
 - c. On 14th February 2022 full written statements of evidence were to be prepared by each party and the copies were to be sent to the tribunal at the hearing.
5. The order then provides a warning of the action which may be taken in the event of non-compliance. So far as I am aware neither party has complied with the directions, I have no written evidence from either of them, nor do I have a bundle of documents.
6. On 11th March 2022 an email from the Tribunal Office was sent to the parties confirming the details for this hearing. Mr. Hayward on behalf of the Respondent replied to that email on 11th March 2022 at 15.42, in the following terms:

Good afternoon,

I have today received a "Confirming your hearing" email from you.

I am unable to attend the video hearing, as my workload prevents it.

I am trying to make ends meet and as a small business I cannot afford to take 2 days off.

The case is a complete joke as the private hire employee didn't have a valid private hire license, so couldn't be employed anyway.

Yours sincerely,

Steve Hayward

Owner

7. At 10am on 14th March 2022, the listed time for the commencement of the hearing, Mr. Smith-Morse had not connected to the hearing. The Tribunal made reasonably practicable enquiries, of Mr. Smith-Morse to enquire of his absence. The clerk made attempts to call him on the two numbers which the Tribunal hold for him. One of these numbers would not connect, the second number was not answered. In addition an email was sent to Mr. Smith-Morse. I put the matter back initially until 10.15 to allow further attempts to be made to contact Mr. Smith-Morse, or to allow him to join the hearing. I then put the matter back further until 10.30 when the hearing commenced. Despite further attempts of the clerk no contact was able to be made with Mr. Smith-Morse by telephone and no email had been received from him.
8. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides that:
If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquires that may be practicable, about the reasons for the party's absence.
9. In addition to Rule 47 I have considered the overriding objective as set out at Rule 2 of the Employment Tribunal Rules of Procedure 2013.
10. There is no information available as to why Mr. Smith-Morse has not attended this hearing despite the efforts of the Tribunal to contact him, nor is there any information on file to indicate he has attempted contacted the tribunal to explain why he would be absent. There is no application for an adjournment.

11. Mr. Hayward, for the Respondent, has explained his absence is due to work commitments, not being able to afford to take time off due to financial constraints, and his views on the merits of the claim. He does not make an application for an adjournment. Considering this hearing was listed on 18th September 2021, I do not consider his explanations to be sufficient to justify his absence.

12. However, in my judgment the claim should be dismissed pursuant to Rule 47. No reason has been provided as to why Mr. Smith-Morse has failed to attend this hearing. He has had sufficient notice as the matter has been set down since 18th September 2021, and an email with the hearing link was sent to him on 11th March 2022. Neither he, nor the Respondent, has complied with the directions in the lead up to this hearing, and I have already noted that I do not have any written evidence from either party nor a bundle of documents. The lack of compliance with the directions and non-attendance at this hearing indicate to me that the claim is not being actively pursued by Mr Smith-Morse.

13. I have considered the further options available to me. I do not consider that the matter should be adjourned. There is no application for an adjournment by either party. The matter has been listed since September 2021 and there is no good reason by either party for not attending. To adjourn, in my judgment would be contrary to the overriding objective. In particular I do not consider that it would be proportionate to adjourn the claim having regard to the complexity of the case and the matters in issue, to do so would increase delay, and increase expense, not only to the parties but also to the Tribunal though further time and resources being provided.

14. I also do not consider that I would be in a position to proceed in the absence of the parties given the nature of the disputes and the lack of any written evidence provided to the Tribunal.

15. Therefore, I have come to the decision that the claim should be dismissed pursuant to Rule 47 Employment Tribunal Rules 2013. As no party has attended the Tribunal has provided written reasons of its own motion.

Employment Judge David Lang

Date: 14 March 2022

Judgment sent to parties: 29 March 2022

FOR THE TRIBUNAL OFFICE