



EMPLOYMENT TRIBUNALS

Claimant

Mr J Wharton

Respondent

Sheehan Haulage & Plant Hire Ltd

V

PRELIMINARY HEARING

Heard at: Reading

On: 3 March 2022

Before: Employment Judge Forde (sitting alone)

Appearances:

For the Claimant:

Did not attend

For the Respondents:

Mrs H Sheehan, Respondent's HR Manager

JUDGMENT

1. The preliminary hearing would proceed in the absence of the claimant.
2. The Tribunal does not have jurisdiction to hear the claimant's claims of notice pay and holiday pay.
3. The claim is dismissed.

REASONS

Preliminary matters

1. The claimant, by way of a claim form presented to the Tribunal on 5 February 2021 pursues claims of breach of notice pay and holiday pay following the termination of his employment. The claim was resisted by the respondent. For the reasons that I shall set out within this judgment, it was not necessary for me to have explored the evidence in relation to whether or not the claimant had viable claims given that it was my view that the Tribunal had no jurisdiction to hear the claimant's claims.

2. At the outset of the hearing, I had to decide whether or not the hearing would proceed in the claimant's absence. The claimant had indicated by way of email that he would be unable to attend the hearing and had applied twice in the week leading up to the hearing to postpone the hearing. Both applications were opposed by the respondent and were rejected on the basis that they were made less than 10 days before the hearing and that none of the circumstances set out in Rule 30A(2) applied.
3. Mrs. Sheehan on behalf of the respondent confirmed that the respondent would be content to proceed in the absence of the claimant. I considered the Rule 47 of the Tribunal Rules as to whether the hearing could proceed in the claimant's absence. As part of this consideration, I assessed the evidence contained within the tribunal file and a number of documents that had been submitted by the parties in advance of the hearing. The claimant had sent an email to the Tribunal on Thursday 3 March 2022 timed at 09:52 hours. In that email, the claimant confirmed that he would not be attending the preliminary hearing and asked for some facts and details to be taken into account at the hearing. From that email, it was clear that the claimant anticipated and expected that the hearing would proceed in his absence were he not to attend.
4. In light of the claimant's email I determined that the hearing should proceed in the claimant's absence and made an order to that effect.

Preliminary hearing – issue to be determined

5. A Notice of Preliminary Hearing dated 8 August 2021, circulated to the parties, identified that the Tribunal would at the preliminary hearing determine whether or not the claimant's claim was out of time. Therefore, that was the sole issue for me to determine at the hearing.
6. The first thing for me to determine was the effective date of termination or alternatively when the claimant's employment ended. Mrs Sheehan confirmed to me that the respondent had in error stated the claimant's termination date within its response to have been 8 September 2020 when in fact it was 9 September 2020. This eliminated the only relevant issue of dispute between the parties as it was the claimant's case that his employment ended on 9 September 2020.
7. The claimant pursues claims of breach of contract and notice pay and holiday pay. Both claims have time limits of three months, i.e. that those claims must be presented to an Employment Tribunal within three months of the termination date. In this case, the time limits for both claims to be presented to a Tribunal expired on 9 December 2020.
8. From the Tribunal file and I could see that there is an ACAS Early Conciliation Certificate by way of reference no. R230706/20/25 that identifies that the date of receipt by ACAS of the EC Early Conciliation Certificate notification was 16 December 2020, that the Certificate itself was issued on 6 January 2021. Therefore, it would appear that the claimant obtained the Certificate beyond the three month time limit that I have already described.

9. Lastly, the claim was received by the Tribunal on 5 February 2021, ostensibly almost two months beyond the statutory time limit.
10. Having reviewed the evidence before the Tribunal, I found that there was no evidence before the Tribunal which could explain the claimant's failure to present his claim in time. Accordingly, I find that the claim has been presented to the Tribunal out of time and therefore the Tribunal has no jurisdiction to hear the claim. Accordingly, I dismiss the claim.

Employment Judge Forde

Date: 10 April 2022

Sent to the parties on:

22/4/2022

For the Tribunal:

N Gotecha