



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Foulkes

**Respondent:** JD Fitness Group Ltd

**Heard at:** London South via CVP

**On:** 17<sup>th</sup> October 2022

**Before:** Employment Judge D Wright (Sitting Alone)

## **Representation**

Claimant: Mr Hooper, Lay Representative

Respondent: Did not attend.

# JUDGMENT

1. The Respondent's name be amended from GJD Fitness Group Limited to JD Fitness Group Limited. The Tribunal record to be updated to show a new address of 26 Goodge Street, Fitzrovia, London, W1T 2QG
2. The Respondent is to pay the Claimant the sum of £6,916.40 gross of tax, national insurance, and pension contributions.
3. Upon receipt of the above sums the Claimant is to account to HMRC for any tax or national insurance contributions owed.
4. The above sums to be paid within fourteen days of service of this Order.

# REASONS

1. The Respondent not being present I have given written reasons for my decision as below.
2. This is a claim brought by the claimant Mr. Richard Foulkes against the Respondent, listed on the claim form as GJD Fitness Limited with an address of 12 The Wharf, 16 Bridge Street, Birmingham, B1 2JS. At the beginning of this hearing, having seen Companies House documentation, I made an order to amend the Respondent's name to JD Fitness Group limited with an associated change of address. The company number of 13460321 remains the same. It is not unusual for companies to change

names or relocate head offices and therefore I read nothing into that as to whether they are attempting to evade these proceedings or not.

3. The Respondent in this matter was validly served with the ET1 and notice of hearing before the change of address but has failed to file a response and therefore under Rule 21(3) is entitled to notice of any hearings and decisions of the tribunal, but not permitted to participate in any hearing unless permitted by a judge. I'm satisfied the Respondent was aware of this hearing today. They've chosen not to attend and therefore I proceed in their absence.
4. The Claimant has attended by video link. Unfortunately, he is in New Zealand and therefore under the Presidential Direction of April 27th of this year, I am unable to hear any evidence or submissions from him. No application was made in advance, so it has not been possible to seek permission from the FCDO or the New Zealand authorities.
5. The Claimant is however, represented by Mr. Hooper, a friend who has assisted him throughout these proceedings.
6. An application was made earlier today to amend the claim form to include some additional claims. I agreed to that application and furthermore I dispensed with the need for re-service of the documents on the basis that the Respondent was aware of this information of this additional claim back in April. Attempts had been made through ACAS to contact them about it and no response was forthcoming. Their absence today suggests that adjourning this matter for them to consider this amendment properly and put in a further Response would not result in any change in circumstances we would still be here today with nothing from the respondents.
7. In coming to this decision, I also took notice that these "additional claims" could in fact be argued to be referred to in the ET1 itself and had a response been filed, a case management hearing would have ironed these points out in any event. I also noted that the date this clarification was sent to the Tribunal and the Respondent was within the three-month limitation period.
8. Moving on to the claim itself. The Claimant was employed by the Respondent's predecessor at their Wandsworth branch under a trading name of Just Cuts. This was bought out by the Respondent and the employees were transferred over under TUPE.
9. Since the buyout by the Respondent there have been no pay slips provided. While some payments have been made, they have not been regular, and they ceased at the end of 2021. The Claimant seeks payments for those unpaid sums.
10. In addition, the Claimant says he received a promotion at the end of November 2021 to be the salon manager and team leader which brought with it a revised wage of £13 an hour. This was verbally agreed between the Claimant and Mr. Joel Bickford of the Respondent in a telephone call on the second of December, and was backdated to 22nd of November.
11. The Respondent has failed to pay this increase in salary even when it has made payments. The Claimant therefore requests that increase as well.

12. In addition, the Claimant makes a claim for additional wages. This being for three months from the 20th of January 2022, to cover the periods during which he and the other employees were waiting for the salon to reopen and includes a reasonable period for him to find alternative employment.
13. The problem the Claimant had and the reason they are claiming this is that at no point have they been told that their services are no longer required. They have not been dismissed by the Respondent. And in fact, after issuing the claim form for these unpaid wages, the Claimant continued to go in for several weeks or months carrying out managerial duties such as doing fire alarm checks and security checks. He was making himself available for work and attempting to contact the Respondents.
14. Finally, the Claimant claims compensation for the stress and anxiety that this has caused. As a result of the stress and anxiety he has experienced difficulty breathing and sleeping. The experience has severely shaken Mr. Foulke's faith in British employers and as a result he has returned to his native country of New Zealand. He incurred substantial additional costs to liquidate his life in the United Kingdom and to set up again in New Zealand.
15. I have been provided with a helpful spreadsheet calculating all these claimed losses and I am grateful for that. It's set out very clearly.
16. Going through the claims as set out on page six of the Claimant's summary we have:
  - a. Unpaid wages, net of deductions, of £1,128.43. This includes the unpaid weeks in January as set out in the claim form plus the difference in pay from the promotion in November. I find that this amount is owed by the Respondent.
  - b. The pension contributions of £268.04 I find are owed
  - c. The tax and National Insurance contributions of £1,368.43. I find are owed by the Respondent.
  - d. The claim for additional wages is for £4,151.50. I accept those calculations. I asked myself whether three months is an appropriate figure here. In considering the complete lack of communication from the Respondents three months, whilst possibly at the top end, is a reasonable length of time. I therefore award £4,151.50 gross of tax, NIC and pension.
17. The remaining claim is for compensation of £2,500. I fully accept that this has caused the Claimant stress and anxiety and that it has caused him difficulties breathing and sleeping. Not having any income or knowing whether you have a job particularly after the traumas of COVID and the financial strain that that's put on many people is bound to cause stress. Unfortunately, there is no medical evidence before this tribunal to show that this stress amounts to a recognised psychological disorder. It is common practice amongst the tribunals, when a claim for personal injury arises, to consider the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases. I make reference to chapter 14 of the 16th edition, in particular the final paragraph of that chapter, which says "*claims solely in respect of shock or travel anxiety, in the absence of physical or recognised psychiatric injury will not attract an award of*

*compensation*".

18. Whilst I fully accept the symptoms suffered by the Claimant were not pleasant, I find that they are akin to claims in respect of shock or travel anxiety. There is no physical or recognised psychological injury before this tribunal and therefore I'm not able to make any claim for compensation. Furthermore, this being a breach of contract claim rather than a discrimination claim I am not able to make any *Vento* award for injury to feelings and therefore I dismiss the claim for compensation without considering the question of liability for these alleged injuries.

Employment Judge D Wright  
Date 17 October 2022

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