



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Olivia Foulkes  
**Respondent:** Natalie Evans

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford (by telephone) **On:** 14 December 2022  
**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: In person  
For the respondent: Did not attend

## JUDGMENT

The judgment of the tribunal is that:

1. The respondent's response is struck out pursuant to Rule 37 Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 on the grounds that the manner in which the respondent has conducted the proceedings has been unreasonable and for non-compliance with orders of the tribunal.
2. The claimant's claim of breach of contract is well founded and the respondent is ordered to pay her damages in the sum of £470 (subject to any relevant tax and National Insurance deductions).

## REASONS

3. This telephone case management hearing was ordered by Employment Judge Dick on 10 October 2022 in the following circumstances:
4. By an order dated 22 September 2022, Employment Judge Warren ordered the parties to exchange documents and witness summaries by 30 September and 6 October 2022 respectively.
5. The matter was listed for a final hearing before Employment Judge Dick on 10 October 2022. As of that date the respondent had failed to comply with the orders of Employment Judge Warren. The respondent did not attend that hearing via CVP. With some hesitation Employment Judge Dick concluded that an adjournment of the case would be in the interest of justice in light of the respondent's apparent difficulties in communicating. Employment Judge Dick concluded by stating:-

“I make the orders below, making clear that the next judge to deal with this case may well regard this as the respondent’s last chance to engage properly with these proceedings.”

6. Employment Judge Dick ordered the following:-

- “1. Within 7 days of this notice being sent out, the respondent must email or write to the Tribunal and the claimant, explaining:
  - (a) Why she did not comply with Employment Judge Warren’s orders of 22 September 2022.
  - (b) Why she did not attend by video link on 10 October 2022.
  - (c) Any difficulties she may have in complying with any of these orders or in participating in the hearings listed below.
  - (d) Any adjustments that the Tribunal might make in order for her to participate effectively in the hearings listed below.
2. If the respondent is unable to comply with order 1 above, she must contact the Tribunal in some other way, also within 7 days of this notice being sent out, to explain why.
3. The case will be listed for a telephone case management hearing on 14 December 2022 at 2pm... for the above issues to be discussed.
4. The final hearing of this claim will now take place by CVP (video) on 18 January at 2pm (Judge sitting alone at Bury St Edmunds).
5. The respondent is warned that any failure to comply with these orders may result in the response being struck out under Rule 37 at the next or any later hearing.”

7. I have had a check made on the system and there is no record of the respondent emailing or writing to the tribunal with the requested explanations. Further, no other contact has been made by the respondent with the tribunal

8. Today, the claimant confirmed to me that she had had no email or letter in response to the order either.

9. The claimant told me that she had received a somewhat puzzling message from the respondent, timed at 11.18am on Friday 9 December 2022, via WhatsApp, stating:

“I need your help Olivia. I really need your help.”

10. The order of Employment Judge Dick was sent out on 6 December 2022 and therefore the time for compliance would have been by 13 December 2022. Consequently, the respondent has failed to comply with the case management orders of both Employment Judge Warren and Employment Judge Dick.

11. The claimant did not attend today. At 2pm I began calling out for the BT Meet Me telephone conference. The claimant joined the hearing. I called the respondent twice but she did not join. Consequently, I terminated the telephone hearing and called the respondent direct at 2.05. Her mobile went on

answerphone and I left a message that the hearing was due to take place and that I would wait a further 20 minutes and resume the hearing at 2.25. At 2.26 I rang out again. The claimant joined the hearing and the respondent did not.

12. In the record of hearing from 10 October 2022, Employment Judge Dick expressed some doubt about whether the respondent was choosing not to participate or whether she was unable to participate. In my judgment, the respondent is clearly capable of communicating by email, telephone and WhatsApp messaging. I have concluded that the respondent is choosing not to participate.
13. Consequently, I have struck out the response pursuant to Rule 37 Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013, on the basis that the way that the respondent has conducted these proceedings has been unreasonable and for non-compliance with orders of the tribunal.
14. Having struck out the response, I have gone on to consider whether on the available material a determination can properly be made of the claim.
15. On the claim form the claimant states that her employment ceased on 25 October 2021 and she claims £470. The claimant told me she worked 47 hours at an hourly rate of £10. In the response form the respondent asserts that the claimant's employment ceased in September 2021. The claimant confirmed to me that she was seeking pay for the three weeks of October that she worked. The claimant told me that an invoice was sent to the respondent setting out the dates she had worked and the hours she had worked. Whilst she has sent that to the tribunal, unfortunately the file was in Norwich and has not been copied over to me. Nevertheless, I accept what the claimant told me about the work she undertook for the respondent in October 2021.
16. Consequently, I find that the respondent does owe the claimant £470 subject to any relevant tax and National Insurance) and that the respondent has made unauthorised deduction of wages and/or is in breach of contract. Accordingly, judgement will be issued for that sum.

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**Employment Judge Alliott**

Date: 10 January 2023

Sent to the parties on:

11 January 2023

For the Tribunal: