



EMPLOYMENT TRIBUNALS

Claimant: Mr W Polston

Respondents: (1) Willican Limited (in liquidation)
(2) Secretary of State for Business, Energy and Industrial Strategy

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 20 January 2023

Before: Employment Judge Gardiner

Representation

Claimant: No attendance

Respondents: (1) No attendance
(2) No attendance

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's claim is dismissed.

REASONS

1. The Claimant was a director and sole shareholder of the First Respondent. He pursues claims for arrears of pay, notice pay, redundancy pay and accrued but untaken holiday pay as at the date of the Claimant's dismissal. The First Respondent is in creditors voluntary liquidation. The Second Respondent is potentially liable for paying certain statutory liabilities of the First Respondent if the Claimant was an employee of the First Respondent and the proceedings were brought within the statutory time limit.

2. In its Response, the Second Respondent argues that the Claimant was not an employee of the First Respondent and therefore does not qualify for the payments claimed. In any event, it argues that the Tribunal has no jurisdiction to consider the claim because the proceedings have been issued outside the required statutory time limit.
3. On 19 December 2022, the Claimant's representative emailed the Second Respondent in relation to this claim, indicating that the claim had been withdrawn on 5 December 2022. However there has been no communication from the Claimant's representative to the Tribunal to confirm that the proceedings had been withdrawn. The Claimant's representative's email dated 19 December 2022 was only forwarded to the Tribunal on 19 January 2023.
4. On 3 January 2023, the Second Respondent wrote to the Tribunal asking for the claims against the Second Respondent to be dismissed on the basis that the Claimant had withdrawn his claim. It indicated that the Second Respondent would not be attending the hearing. This request from the Second Respondent was repeated on 11 January 2023 and again on 19 January 2023, enclosing the email correspondence from the Claimant's representative of 19 December 2022.
5. By the start of the Final Hearing there had been no direct communication from the Claimant or his representative to indicate that the proceedings had been withdrawn. The most recent communication from the Claimant's representative to the Tribunal was the ET1 itself.
6. The Final Hearing was listed to take place on 20 January 2023. No party has attended the Hearing either in person or by sending a representative.
7. In the circumstances, the Tribunal has treated the Claimant as having withdrawn the claim, given that this was indicated in correspondence between the Claimant's representative and the Second Respondent. It is appropriate to dismiss the claim upon withdrawal under Rule 52 Employment Tribunal Rules 2013.
8. If the Tribunal is wrong to conclude that the proceedings have been withdrawn, then the proceedings are dismissed under Rule 47 Employment Tribunal Rules 2013.

**Employment Judge Gardiner
Dated: 20 January 2023**