



EMPLOYMENT TRIBUNALS

Claimant
Denise Langan

Respondent
v Dove Security Limited

Heard at: Norwich (hybrid hearing – in person and via CVP)

On: 10th January 2023

Before: Employment Judge: Mr. A Spencer

Appearances:

For the Claimant: No attendance

For the Respondent: Mr. L. Pike (solicitor)

JUDGMENT

1. **The claims are dismissed.**

REASONS

1. The reasons for the judgment are set out below.
2. This case came before me today for a final hearing. It was listed as a hybrid hearing. The claimant was to attend in person and the respondent was to attend via video link using the CVP system.
3. The claimant presented her claim form on 2 February 2022 and brings claims against the respondent for unauthorised deductions from wages and holiday pay. The respondent opposes the claim on the basis that the claimant has been paid for all the hours she worked (i.e. without any deduction or shortfall) and has been paid more than the holiday pay due to her.
4. The claim form did not identify the alleged deductions from wages nor did it provide any meaningful information about the claim for holiday pay. The reader is left without any understanding of the claim.

5. The case was listed for a final hearing before Employment Judge Freshwater on 3 October 2022. The hearing was ineffective. I understand that the claimant was late and the start of the hearing was delayed. The hearing was postponed as neither party had prepared any documents or witness statements (although to be fair to the parties, I have not seen any case management orders from the tribunal that required them to take these steps before the hearing on 3 October 2022).
6. The basis for the claims was not clarified at the hearing on 3 October 2022. Employment Judge Freshwater made orders for the parties to provide documents to each other, to agree and prepare a hearing bundle and provide witness statements to each other. The claimant has not complied with those orders. The claimant has given no explanation for her failure to comply.
7. The claimant's case is still unclear. She has still provided nothing to explain what deductions she says were made from her wages and has still not provided any information about her claim for holiday pay.
8. The respondent provided a bundle of documents and a witness statement for today's hearing. I have read the documents. The documents contain evidence of:
 - 8.1 The dates on which the claimant worked for the entire period of her employment together with a record of the venue at which she worked on each date, the number of hours worked each day, the hourly rate of pay and the total amount of payments due for each day and for the period of employment as a whole;
 - 8.2 The respondent's bank records showing all payments made to the claimant;
 - 8.3 The claimant's pay slips.
9. The documents and figures all appear to tally up. They indicate that the claimant has been paid in full for all hours she worked (i.e. without deduction or shortfall).
10. Further, the evidence from the respondent regarding holiday pay appears to show that the claimant has received a payment for her accrued holiday pay that is slightly in excess of her statutory entitlement.
11. In contrast, the claimant has provided no evidence to support her claims. She has failed to provide a witness statement. It is still unclear what deductions she says were made, when those deductions were made and the amounts concerned. Further, the claimant has still failed to provide any evidence to substantiate her claim for holiday pay.
12. The case was listed today for a final hearing.
13. On the day before the hearing the claimant applied to the tribunal by email for a postponement. She made her request on the basis that she wanted to "gather information" and seek legal advice. She did not copy her request to

the respondent as required by Rule 92 of the Employment Tribunal Rules of Procedure (“the Tribunal Rules”). Nor did she comply with the Employment Tribunals (England & Wales) Presidential Guidance – Seeking a Postponement of a Hearing (“the Presidential Guidance”). The claimant’s postponement request was refused by Employment Judge Palmer and the claimant was notified.

14. Later the same day, the claimant made a second postponement application. On this occasion she cited the death of a relative as the reason for the postponement. Again, she failed to comply with Rule 92 of the Tribunal Rules and the Presidential Guidance. The request was forwarded to the respondent who opposed the postponement. I am told by the respondent today that the claimant cited the death of a relative as a reason for not attending work when she was employed by the respondent.
15. The claimant has not attended the hearing today. I delayed the start of the hearing from 10am until 11am. She had not arrived by 11am.
16. In the circumstances, the respondent invited me to refuse the claimant’s second postponement request.
17. The power to postpone a hearing is one of the tribunals’ case management powers under Rule 29 of the Tribunal Rules. That power should be exercised in a way that seeks to further the overriding objective of dealing with cases fairly and justly.
18. I have refused the claimant’s second postponement application. It was made late and without compliance with Rule 92 of the Tribunal Rules and the Presidential Guidance. It appears to me that the true reason for postponement is the fact that the claimant has not complied with the tribunal’s case management orders and is unprepared for the hearing. There is no good reason for that failure. The second postponement application is refused.
19. In the circumstances, I have decided to dismiss the claim under Rule 47 of the Tribunal Rules. The claimant has not attended the hearing. She has indicated that the reason for this is due to bereavement. However, I do not accept that. The real reason for the postponement application is the claimant’s failure to prepare for the hearing.
20. I will dismiss the claim in the circumstances. This is the second attempt at an effective final hearing. The claimant has had ample time to prepare for this hearing. She has failed to do so without any good reason. Even if I had granted the postponement application it appears that this claim is doomed to fail. The respondent’s evidence indicates that there have been no deductions from the claimant’s pay and that she has been paid more than her statutory entitlement to holiday pay. There is nothing to suggest that this claim has any merit or would succeed if it were to proceed to a final hearing. It is not a kindness to allow a hopeless case to proceed to a hearing. To do so will cause the parties to waste time and to incur unnecessary expense. It would also deprive other tribunal users of a valuable hearing slot.
21. For these reasons I dismiss the claim.

22. The respondent's representative made an application for costs at today's hearing. I declined to deal with the application today in the claimant's absence. Rule 77 of the Tribunal Rules requires the claimant to have a reasonable opportunity to make representations before a costs order is made. If the respondent seeks costs, it must make a written application setting out the basis of the application and details of the costs sought. That application can then be sent to the claimant by the tribunal administration to seek her response before the application is determined.

Employment Judge: Mr. A Spencer

Date: 10th January 2023

Judgment and Reasons sent to the parties on

4th February 2023

GDJ
For the Tribunal office