



EMPLOYMENT TRIBUNALS

Claimant

Mrs Danielle Jackson

v

Respondent

Greenwich Leisure Limited

Heard at: Manchester hearing Centre

On: 11 May 2023

Before: Employment Judge Tobin, sitting alone

Appearances:

For the claimant: Not present or represented
For the respondent: Not present or represented

JUDGMENT

The claimant's claim is dismissed, pursuant to rule 47 of the Employment Tribunals Rules of Procedure 2013.

REASONS

- 1 The Claim Form was issued on 1 September 2022. The claimant claimed an unauthorised deduction of wages, pursuant to section 13 Employment Rights Act 1996, in respect of a Manchester bonus and shift allowances. The Response denied any liability and contended that the claim was presented out of time. A closed Preliminary Hearing was held for case management purposes before Employment Judge Ross on 6 December 2022. That Preliminary hearing recorded a 2-day full merits hearing being listed to commence today. A separate notice of hearing was sent to the parties on 16 December 2022.
- 2 On the morning of the hearing I was given an email from the claimant's representative which was since the Tribunal at 21:09 the night before and stated that the parties had agreed in principle on settlement, it indicated that there were matters to work on and that they were optimistic that the matter would be fully

resolved with ACAS and the claimant's representative. The email also applied to adjourn the hearing 21 days. The email was copied to the respondent's representative, although I have not heard from them.

- 3 I refuse the application to adjourn as the email is very clear that a full settlement has not been agreed or concluded. One parties *optimism for settlement* is no proper basis to adjourn this hearing.
- 4 At the hearing neither party or their representatives attended. The clerk searched the building and confirmed non-attendance. She telephoned the claimant's representative (at 10:10) to no avail. The respondent did not have telephone contact details. The clerk telephoned ACAS and no settlement had been reported. As there was no attendance or further contact by any party by 11:10; the clerk then confirmed with security that no-one had signed in by that time.
- 5 In view of the parties' non-attendance, I first considered whether to proceed in their absence. A request for an adjournment had been made, which I refuse for the reason above. I could not think off any reason to justify not attending the Tribunal to explain further or hear the outcome of the adjournment application. The parties were aware of the hearing today as notice had been given twice and the claimant's email of last night (copied to the respondent) made reference to today's hearing. I am also satisfied, that both parties were aware of the importance of attending this hearing. If I did not proceed today, I could not be assured that we would not experience similar non-attendance at any reconvened hearing. Accordingly, I decided that it was appropriate and within the overriding objective of rule 2 of the Employment Tribunal's Rules to proceed in the absence of both parties.
- 6 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 ("the 2013 Rules") applied. That provides:

"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

- 7 The parties and/or their representatives were discourteous in their treatment of the Tribunal. Unfortunately, discourtesy is something Employment Judges are growing accustomed to in undertaking our role. The apparent discourtesy is not a factor I took into account. The key factor is that Employment Tribunals are under enormous pressure with the volume of claims and, like other sectors of the public service, we need to deliver much more for less resources. The parties have a right to a fair hearing, but they do not have a right to ongoing indulgence. Cases are waiting for hearing for up to 2-years or longer. This hearing was scheduled for 2-days today, and that slot cannot be reallocated to another case

to fill the gap. This cannot be an acceptable use of scant public resources to postpone the hearing for today and tomorrow without a clear resolution.

- 8 I considered whether dismissing this claim would be disproportionate in the circumstance of the respondent's non-attendance also. If the claimant had attended, and the respondent had not, then a similar exercise could have resulted in a decision adverse to the respondent. However, the claimant chose to bring the claim and she bore the carriage of proceedings. Indeed, she has the burden of proof. So, it is not disproportionate to make a decision more adverse to the claimant in these circumstances.
- 9 In the circumstances, it is appropriate to dismiss the claimant's claims.

Employment Judge Tobin
Date: 11 May 2022

JUDGMENT SENT TO THE PARTIES ON
17 May 2023

FOR THE TRIBUNAL OFFICE