



EMPLOYMENT TRIBUNALS

Claimant: Marina Brookes
Respondent: Progabbona Ltd
Heard at: Watford Employment Tribunal by CVP
On: 15 May 2023
Before: Employment Judge Annand

Representation

Claimant: No attendance or representation
Respondent: Mr Pasqualin

JUDGMENT

1. The Claimant's claims are dismissed under Rule 47 of the Employment Tribunal Rules, contained in Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, as a result of the Claimant having failed to attend or be represented at the final hearing listed for 15 May 2023.

REASONS

1. On 1 August 2022, the Claimant submitted a Claim form to the Tribunal. She ticked the box indicating that she had been unfairly dismissed and was claiming "arrears of pay". In the Claim form, she set out in writing that she was employed as a delivery driver, as a "self employed" person, but she wrote she had received advice from a Citizens Advice Bureau and they had said that the contract was not legitimate, and it sounded as though she was employed. She noted she had asked twice about payments which had been deducted, and Andrew had given her two different answers and shouted at her. She also noted she was bitten by a dog, and he would not allow her to go to hospital immediately and made her deliver parcels as there had been no one else to help out. She noted she had suffered considerable stress and had lost

earnings. She noted in her Claim form that she had worked for the Respondent between 13 February 2022 and 14 May 2022.

2. In the Claim form, the Claimant indicated her preferred method of communication was post. She provided her address and phone number, but she did not provide an email address.
3. On 6 September 2022, the Claimant was sent a Strike Out Warning by the Tribunal. This was sent by post. It noted the Claimant had indicated one of the claims she wished to bring was a claim of unfair dismissal but that under section 108 of the Employment Rights Act 1996 she was only entitled to bring a claim for unfair dismissal if she had been employed for two or more years except in specific circumstances which did not apply to the Claimant's case. The Warning noted that it appeared from the Claimant's form that she had been employed for less than two years. She was advised she had until 14 September 2022 to give reasons in writing as to why her complaint of unfair dismissal should not be struck out.
4. On the same day, the Claimant's claim was sent to the Respondent. The Respondent was advised it did not need to enter a response to the Claimant's unfair dismissal claim at that stage but did need to respond to the Claimant's other claims.
5. On 4 October 2022, the Respondent submitted a Response form. It set out that the claims were defended. In the Response form, it was asserted the Claimant was not employed by the Respondent but was self-employed. She had worked for the Respondent between 10 March 2022 and 14 May 2022. It was noted she had been let go because she was not making deliveries on time and was unreliable in turning up for work.
6. On 23 December 2022, the parties were sent a Notice of Hearing by Video. The Notice informed the parties that the hearing had been listed for 15 May 2023, it would be heard by video, and would start at 10am. The Notice was sent by post to the Claimant. The Notice contained some case management orders. By 20 January 2023, the Claimant was to send the Respondent a schedule of loss. By 3 February 2023, the parties were to send each other any documents they wished to refer to at the hearing. By 3 March 2023, the Claimant and the Respondent were to prepare and exchange witness statements. These were to be filed electronically with the Tribunal by email.
7. On 9 May 2023, the Respondent applied by email to have the hearing adjourned. On 12 May 2023, the Tribunal rejected that request. It was noted that the request was made within 7 days of the hearing but there were no exceptional circumstances. The notice which informed the parties that the adjournment request was refused was sent by post to the Claimant and noted, "The case remains listed for hearing on 15 May 2023".

8. On 12 May 2023, the Respondent was sent the link to the video hearing by email by the Listing Office. On the same day, the Listing Office telephoned the Claimant and left a voicemail message requesting that she provide an email address so that she could be sent the link for the video hearing. The Listing Office did not receive a response.
9. At the start of the hearing on 15 May 2023, Mr Pasqualin attended the hearing on behalf of the Respondent. The Claimant did not attend. Shortly after 10am, the clerk telephoned the Claimant and left her a voicemail message. The clerk confirmed that the Tribunal had not received any communication from the Claimant since her Claim form had been received. She had not responded to the Strike Out Warning, she had not complied with the case management orders, and she had not indicated she would not be attending on 15 May 2023, nor asked for an adjournment.
10. I advised Mr Pasqualin that we would wait until 10.30am to see if the Claimant responded to the clerk's voicemail message or joined the hearing. By 10.30am, the Claimant had not joined the hearing. Mr Pasqualin confirmed that he had received no communication from the Claimant in accordance with the case management orders. He said he had not received a schedule of loss or any documents for disclosure purposes. He said he had not heard from her since the Claim form had been submitted.
11. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides that 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.
12. Firstly, I considered if it was appropriate to adjourn the case. I decided it was not appropriate. The Claimant had not requested an adjournment. I had not been provided with any reason for the Claimant's absence. The Claimant has not communicated with the Tribunal or the Respondent since her claim form had been received. She did not respond to the Strike Out Warning and had not complied with the case management orders. I concluded it would not have been in line with the overriding objective, to deal with cases fairly, to have adjourned the case in these circumstances.
13. I then considered if I could proceed to hear the Claimant's claims in her absence. I decided that I could not. The Claimant does not appear to have sufficient length of service for a claim for unfair dismissal. The only other potentially viable claim set out in her claim form related to an unlawful deduction from wages claim. However, there was a dispute about whether the Claimant was a worker or self employed, and in any event, it was not clear what deductions the Claimant was complaining about. She had provided no

details in her claim form. I concluded that I did not have sufficient information about what the Claimant was complaining about to hear the Claimant's claims in her absence.

14. I therefore concluded that the Claimant's claims should be dismissed under Rule 47 for non-attendance. The Claimant had not responded to the Strike Out Warning or complied with any of the case management orders. She had not communicated to the Tribunal any reason for her absence on 15 May 2023. She had not been in touch with the Tribunal or the Respondent since her Claim form was submitted. I do not have sufficient information to determine her claims without her clarifying what she is complaining about. In these circumstances, I decided her claims should be dismissed.

Employment Judge Annand

Date: 15 May 2023

JUDGMENT SENT TO THE PARTIES ON

12 June 2023

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J Moossavi

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