



EMPLOYMENT TRIBUNALS PUBLIC PRELIMINARY HEARING

Claimant

Respondent

v

Mr S Tunnicliffe (1)

Ms D Lynch (2)

Futures Leisure Limited

Heard: In Sheffield in person

On: 13 June 2023

Before: Employment Judge JM Wade

Appearance:

For the Claimants: No attendance

For the Respondent: Ms B Davies, counsel

JUDGMENT

The claimants' claims against the respondent are dismissed pursuant to Rule 47 upon the claimants' failure to attend or be represented at today's preliminary hearing.

REASONS

1 The claimants presented complaints of unlawful deduction from wages and, in the first claimant's case, disability discrimination. There was a case management hearing on 13 March 2023 at which directions were given for this hearing and the disability discrimination complaint dismissed. The context is works undertaken by the claimants for the respondent firm, which is involved in urban playgrounds and play equipment. It is said that invoices are unpaid or underpaid. The claimants say they are employees or workers. The respondent denies that they are employees or workers and says they have no standing to bring complaints before this Tribunal, being self employed contractors.

2 The claimants had not complied with the order to provide witness statements for today, saying, in their last email communication on 4 June 2023, "as previously stated we have no [worness] statements to make we rely solely on the defendants initial response which confirmed we were asked to attend regular staff meetings....and were given things like company vans 2 of and a very large tool

allowance..."The email went on in brief terms to comment on the merits and then said, "*he still retains my tools, clear breach of contract. Nothing more to add. I don't need to see your statements I was there. Thank you*"

3 After deciding the preliminary employment status issue today, I may then have also needed to decide two applications: an application from the claimants to add breach of contract particulars concerning tools unreturned, and an application to add an employer's contract claim concerning costs involved with a failure to return a vehicle and other matters.

4 The sums involved in this case do not exceed £10,000, and appear to be considerably less than that in the round. There appears to be no written contract between the parties. There has also been police involvement in the case, and from the documents I have seen, one matter to be examined today is that the claimants appear to have used different names in their dealings with the respondent to those in the claim form – that may be a practice in their field, but it would require explanation and in particular how that has also been addressed with HMRC.

5 Today, the respondent's director Mr Shipley attended on time with counsel and had provided a bundle and statement in accordance with the directions, and a skeleton argument with helpful guidance on the law. The notice of hearing was clear and sent to the parties also on 13 March 2023.

6 By 10am the claimants were not here. I confirmed the last information on the file, the email above. I asked our clerk to telephone the number contained within the claim form; there was no response and she left a brief message.

7 By 11am there was no information before me to indicate the reason for non attendance. Ms Davies confirmed that there had been no contact from the claimants to her instructing solicitor since that last email above.

8 The fact that the claimants have not attended today may reflect that something untoward has happened to them, or another very good reason for not attending such as sudden bereavement. I very much hope not. More likely is that they have abandoned their claims, given the evidence that would need to be heard, and are getting on with matters.

9 I considered three possibilities: postpone, proceed with an evidential hearing in their absence, or dismiss pursuant to Rule 47. The first option results in wasted cost for the respondent and the public purse; the second option is potentially unjust because it involves hearing evidence about which there appears to be dispute in circumstances where this may not be the right forum, and proceedings may be brought by either side in the county court. In these circumstances, I consider it is fair to dismiss the claims today and bring the proceedings to an end in this Tribunal. If I am wrong and something untoward has happened to the claimants today, or some other very good reason for non attendance, there is the possibility of an application for reconsideration of this judgment. Any such application must clearly set out reasons for the failure to attend today and address the other matters in these reasons or otherwise say why it is in the interests of justice to revoke this Judgment.

Employment Judge JM Wade

Dated: 13 June 2023