



EMPLOYMENT TRIBUNALS

Claimant

Mr. T McClennaghan

v

Respondent

Thai Tana Limited

Heard at: Huntingdon

On: 24 May 2023

Before: Employment Judge M Ord (sitting alone)

Appearances

For the Claimant: No attendance and not represented

For the Respondent: Mr L Hutchings, Solicitor

JUDGMENT

1. The Claimant's complaint that he was unfairly dismissed is struck out. The Claimant does not have sufficient qualifying employment to bring the claim.
2. The Claimant's complaint that he was dismissed in breach of his contract is struck out. The Claimant has adduced no evidence in support of his claim, has not complied with the orders of the Tribunal, has not actively pursued his claim and has failed to attend today's Hearing.
3. The Respondent has judgment for damages to be assessed on its employer's contract claim.

REASONS

1. This matter came before me today for a Final Hearing.
2. The Claimant was employed by the Respondent from 8 November 2021 to 27 September 2022 as Head of Operations.
3. On 5 September 2022 the Claimant resigned his position on 3 months' notice. The Respondent placed him on garden leave.

4. During the period of notice the Respondent summarily terminated the Claimant's employment due to his failure to return company equipment and because of an outstanding loan account. The date of termination was 27 September 2022.
5. The Claimant engaged in early conciliation through ACAS beginning on 29 September 2022. His early conciliation certificate is dated 26 October 2022.
6. On 28 October 2022 the Claimant presented his claim form to the Tribunal claiming payment for the balance of his notice period and complaining that he was unfairly dismissed.
7. The Respondent submitted a response on 18 December 2023. The claims were resisted and the Respondent brought an employer's contract claim for the sums due under the Claimant's loan account, the value of unreturned property and interest. The sum claimed was said to be "at least £11,470.87".
8. On 22 February 2023 notice of the employer's contract claim was sent to the Claimant with instructions on the filing of a response thereto and the consequences of not responding.
9. No response to the employer's contract claim has been submitted by the Claimant.
10. The case had been listed for a 1 day Final Hearing before a Judge sitting alone at Huntingdon on 24 May 2023, by Notice sent to the parties on 9 February 2023.
11. In that Notice of Hearing, Case Management Orders were given requiring the parties to exchange documents relevant to the issues between them by 23 March 2023, for the Respondent to provide a Bundle of all documents to the Claimant by 6 April 2023 and for the exchange of witness statements on or before 3 May 2023.
12. I have today been shown, as part of the Bundle before me the following;
 - 12.1 First an email from the Respondent's Representative to the Claimant dated 29 March 2023 suggesting (as time had passed and the Tribunal's Orders had only then been received) documents be exchanged on 12 April with a Bundle to be prepared by 26 April and witness statements exchanged on 10 May. There was no reply to this email.
 - 12.2 Next an email from the Respondent's Representative to the Claimant dated 5 April 2023 stating that, as there had been no response to the previous email, documents would be sent on

12 April and that it was expected that the Claimant would also send his documents to the Respondent.

12.3 Third an email from the Respondent's Representatives to the Tribunal, copied to the Claimant, dated 14 April 2023 seeking strike out of the Claimant's claims on the basis that the Claimant was not actively pursuing his claim and had failed to comply with the Tribunal's Orders of 9 February 2023. That email does not appear, on the information before me, to have received judicial consideration.

12.4 Finally, the Respondent's Representative wrote to the Claimant on 19 May 2023 (last Friday) stating that it was assumed that the Claimant would not be attending the Hearing "next week" unless he made contact. At 15:47 that day the Claimant emailed the Respondent's Representative saying, "*see you next week chap*".

13. The Claimant has otherwise not communicated with the Respondent's Representative or the Tribunal since the presentation of his claim form.

THE LAW

14. Under s.108 of the Employment Rights Act 1996 the right under s.94 not to be unfairly dismissed does not apply to the dismissal of an employee who has not been continuously employed for a period of not less than two years ending with the effective date of termination.

15. Under Rule 23 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 ("the ET Rules") any employers contract claim shall be made as part of the response to any claim which includes a contract claim brought by the Claimant.

16. Under rule 25 of the ET Rules if a Claimant does not respond to a employer's contract claim rules 20 and 21 apply. Rule 20 of the Employment Tribunal Rules relates to an Application to extend time and does not apply here.

17. Under rule 21 of the ET Rules where no response has been received a Judge shall decide whether a determination of a claim or any part of it can be made on the basis of the information available otherwise a hearing shall be fixed.

CONCLUSIONS

18. The Claimant has insufficient service to bring a complaint of unfair dismissal and that complaint is dismissed as the Tribunal has no jurisdiction to hear it.

19. The Claimant has not actively pursued his complaint and has failed to comply with the Tribunal's Orders. He has failed to attend today's Hearing and has adduced no evidence in support of his complaint. For those reasons the complaint that the Respondent dismissed the Claimant in breach of contract is dismissed.
20. The Claimant has not submitted a response to the Respondent's employer's contract claim. The Respondent is entitled to judgment.
21. I am not satisfied on the basis of the information before me of the value of that claim. Accordingly I have made the following Case Management Orders:

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. **Documents**

By **7 June 2023**, the Respondent is to send to the Claimant and the Tribunal copies of all relevant documents in relation to the sums claimed by way of its employer's contract claim, together with a copy of any witness statement on which the Respondent relies.

2. **Response by Claimant**

By **21 June 2023**, the Claimant is to send any comment, documents or witness statement in answer or challenge to the value of the employer's contract claim to the Respondent and the Tribunal.

3. **Determination of Award**

Thereafter, unless either party has requested a Hearing when sending their documents and statements to the Tribunal, the question of the sum to be awarded to the Respondent under its employer's contract claim, will be determined by Employment Judge Ord on the basis of the written information provided.

OTHER MATTERS

4. The above Orders were made and explained at the Hearing. All Orders must be complied with even if this written record of the Hearing is received after the date for compliance has passed.

5. **Public access to Employment Tribunal Decisions**
All Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant and Respondent in a case.
6. **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
7. **Under rule 6, if any of the above Orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

**Employment Judge M Ord
25 May 2023**

Sent to the parties on: 23/6/2023

N Gotecha - For the Tribunal: