



EMPLOYMENT TRIBUNALS

Claimant: Mr R Cobey
Respondent: Kelvedon Auto Spares 87 Limited
Heard at: East London Hearing Centre
On: 17 August 2023
Before: Employment Judge J Feeny

Representation

Claimant: Not in attendance or represented
Respondent: Mr Stephens, Counsel

JUDGMENT

The claim is dismissed pursuant to Rule 47 due to the non-attendance of the Claimant.

REASONS

1 This was a Full Merits Hearing to determine the Claimant's complaints of unfair dismissal and unpaid wages. The Claimant was employed by the Respondent from August 2020 until October 2022.

2 It is accepted by both parties that the Claimant was summarily dismissed by the Respondent in late October 2022. The most likely date for this is 28 October 2022, although the P45 states that the date of termination was 31 October 2022. I am told, however, that the P45 is in those terms because the Claimant was paid until the end of that calendar month.

3 The Claimant conciliated with ACAS from 6 February 2023 to 8 February 2023. He presented his ET1 on 28 February 2023.

4 On 3 April 2023 the Tribunal sent out a Notice of CVP Hearing for today's date, along with standard directions for an unfair dismissal complaint.

5 On 19 April 2023 the Respondent lodged its ET3 defending the claim and raising two jurisdiction defences. It has since been clarified that the Respondent now only raises one jurisdiction defence, that being that the claim was presented out of time.

6 On 11 May 2023 Judge Russell directed that the questions of jurisdiction would be determined at the start of the Full Merits Hearing.

7 On 31 May 2023 the Claimant sent an email to the Tribunal which he did not copy to the Respondent. The email was in the following terms:

“Good afternoon, I have tried calling you and there has been no response. I am contacting you because I would like to cancel my Employment Tribunal claim on my old employer Kelvedon Auto Spares 87 Limited, my case number is 3200400/2023 because they have sent me a letter saying if I do not cancel by May 31 by 4pm, I may be liable to pay for their solicitor's fee. Also, not too sure if it is also appropriate, I do have a letter for a final hearing on 17 August. I would really appreciate it if you could get back to me as soon as possible.
Kind Regards, Mr Rhys Cobey.”

8 In response to that letter Judge Burgher sent a letter on 10 July 2023 which said as follows:

“The Claimant must confirm whether he wishes to withdraw his claim. He should seek independent legal advice and should do so free from alleged duress or threats. A copy of the notice of hearing is enclosed”.

As stated, attached to that letter was the Notice of Hearing already sent to the parties. That letter was sent to the Claimant by email since he had since provided his email address to the Tribunal.

9 There was no response from the Claimant and on 4 August 2023 the Tribunal wrote to the Claimant again in the following terms:

“The Tribunal Office would like to hear from the Claimant on whether they are pursuing their claim or not. We last sent a letter regarding this matter on 10 July 2023. At present the case is listed for a hearing on 17 August 2023”.

There was no reply to that letter.

10 On 15 August 2023 Judge Russell wrote as follows:

“The case currently remains listed for 17 August 2023 as Claimant has not replied to Acting Region Employment Judge Burgher's letter dated 10 July 2023. Please confirm by return whether the Claimant is pursuing this claim”.

There was no response to that letter.

11 The position therefore as of 10am today, being 17 August 2023, was that the Claimant had not responded to any communication from the Tribunal since sending his email on 31 May 2023.

12 I called the case on at 10am today. The Claimant was not in attendance. There was full attendance on the part of the Respondent: it was represented by Mr Stephens (counsel), Mr Bowman (solicitor) was also present, as were the three witnesses for the Respondent.

13 I stood down the hearing until 10:15am to allow the Claimant time to join. My clerk was unable to contact the Claimant in the meantime as the only telephone number provided by him in the ET1 was, somewhat confusingly, the Respondent's work telephone number. I resumed the hearing at 10:15am. The Claimant was still not in attendance. I then heard submissions from Mr Stephens on how the Respondent invited me to proceed in the absence of the Claimant, He invited me to dismiss the claim pursuant to Rule 47 and made submissions in support of his position.

14 I also heard from the Respondent's solicitor, Mr Bowman. He confirmed that he had attended the Claimant's house in person twice to deliver correspondence to the Claimant including the bundle and papers for this hearing. On both occasions the Claimant's mother answered the door. She told Mr Bowman that the Claimant was out and that she would make sure that he got a copy of the documents. Mr Bowman attempted to impress upon the Claimant's mother the importance of the Claimant complying with directions. I did not take evidence on oath from Mr Bowman, but I am satisfied that what he has told me is correct.

15 I decided to proceed with this hearing in the absence of the Claimant. I am satisfied that reasonable enquiries had been made into his absence. There is a limit to what the Tribunal can do in the absence of the Claimant's phone number. Furthermore, somewhat unusually, in this case I have an account from the Respondent's solicitor that he has attempted to persuade the Claimant, albeit via his mother, to attend the hearing today and yet the Claimant has still not attended.

16 I am satisfied that the non-attendance on the part of the Claimant is deliberate and not accidental. The Claimant has been aware of the hearing date, he stated as much in his email to the Tribunal on 31 May. That email shows that he is capable of corresponding with the Tribunal. In my judgment and based on the information available to me, he is deliberately ignoring correspondence from both the Respondent and the Tribunal. He has also not complied with directions: he has not provided any disclosure, any documents nor a witness statement for this hearing.

17 In light of the deliberate non-compliance on the part of the Claimant, I am satisfied that it is appropriate to dismiss his claim without needing to hear evidence from the Respondent on the substantive issues in this claim. It would not be appropriate to put the Respondent to the imposition of proceeding with a Hearing which the Claimant has deliberately refused to prepare for and attend.

18 In the event that I am wrong on that, and I should have proceeded to hear the claim in the absence of the Claimant, the first issue that I would have to determine at the full hearing would be jurisdiction. I will therefore set out the relevant aspects of this issue.

19 The relevant dates are as follows. The effective date of termination was most likely on 28 October 2022. That means the claim should have been presented to the Tribunal by 27 January 2023. ACAS conciliation, as I have already noted, was between 6 and 8 February 2023 with the ET1 being presented on 28 February 2023. Given that the ACAS Early Conciliation took place after limitation had expired, it is of no effect in extending the time limits. The claim has therefore been presented one calendar month and one day out of time. Even if the effective date of termination was as late as 31 October 2022, the claim is still out of time by just under a calendar month.

20 Section 111 of the Employment Rights Act 1996 is in the following terms:

- “(1) A complaint may be presented to an Employment Tribunal against an employer by any person that who was unfairly dismissed by the employer.
- (2) Subject to the following provisions of this section, the Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal –
 - (a) before the end of the period three months beginning with the effective date of termination, or
 - (b) within such further period times the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months”.
- (3) There was no evidence from the Claimant as to why the claim was presented late. Inevitably therefore he could not satisfy the Employment Tribunal that it was not reasonably practicable for him to have brought the complaint in time. If I had proceeded with the hearing in the absence of the Claimant and dealt with preliminary matters, I would have therefore dismissed the claim for lack of jurisdiction in any event.

Employment Judge J Feeny

4 September 2023