



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Goodman

**Respondent:** Italian Catering Concept Ltd (in voluntary liquidation)

**Held at:** Manchester Employment Tribunal      **ON:** 14 September 2023

**Before:** Employment Judge McCarthy  
**Members:** Mr TD Wilson and Ms V Worthington

## REPRESENTATION:

**Claimant:** No one in attendance  
**Respondent:** No one in attendance

## JUDGMENT

It is the **unanimous** Judgment of the Tribunal that the claim is dismissed pursuant to Rule 47 of the Employment Tribunal Rules of Procedure 2013 (contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as amended), following the failure of both parties to the claim to attend or be represented at the final hearing listed to commence in person on 14 September 2023 for 2 days.

## REASONS

1. The claimant presented his claim on 17 August 2022, bringing claims for constructive unfair dismissal, wrongful dismissal/ notice pay, and victimisation. The respondent filed a response form disputing the claims on 7 December 2022, which was accepted on 3 February 2023.

2. The claim was listed for a full hearing on 20 and 21 April 2023 but this did not go ahead and the full hearing was converted into a preliminary hearing on 20 April 2023. The parties were informed that the full hearing was re-listed for 14 and 15 September 2023 at this preliminary hearing. A Record of the Preliminary hearing of 20 April 2023 was also sent to the parties on 27 April 2021 confirming the date of the re-listed final hearing.
3. The Tribunal assigned to hear the claim were ready at 10am on 14 September 2023 to commence the hearing. We were informed by the clerk that none of the parties (or any representative they may have instructed) were in attendance in the waiting room. The clerk confirmed that she had not been contacted by the claimant or the respondent with regard to the hearing that morning regarding their attendance. There was no application for a postponement.
4. At the preliminary hearing on 20 April 2023, the Tribunal had made case management orders that:
  - a. The claimant must update his Schedule of Loss and send to the respondent and Tribunal not less than seven days before the first day of the final hearing;
  - b. the claimant must provide the Tribunal with five copies of the claimant's witness statements at least two days before the first day of the final hearing;
  - c. the respondent must provide the Tribunal with five copies of the respondent's witness statements and an agreed hearing bundle at least two days before the first day of the final hearing.

The clerk confirmed that no hearing bundle or witness statements had been provided by the respondent and the claimant had not provided to the Tribunal his updated schedule of loss or witness statements.

5. As neither the claimant or the respondent (and/or any representative they may have instructed) was in attendance, we asked the clerk to contact the parties by phone to establish whether they were attending. The clerk left a message for the claimant as his voicemail said that he currently in a "conference". The phone number provided for the respondent was a restaurant reservations phone line.
6. As the Tribunal had email addresses for both parties, we asked the clerk to send an email to both the claimant and respondent reminding them of the hearing and asking whether they were attending the hearing. The claimant had not responded to the attempts to contact him by email or phone as at 10.47am.
7. On considering the electronic and paper file we noted that the last correspondence on the file from either party pre-dated the last preliminary hearing on 20 April 2023.

8. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides that *“if a party fails to attend or 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 available to it, after any enquires that may be practicable, about the reasons for the party’s absence”*.
9. We did consider whether to proceed with the hearing in the absence of the claimant and respondent on the basis of the information available to us. However, we decided it was not appropriate to proceed given the claimant’s main claim was one of unfair constructive dismissal. The burden of proof was therefore on the claimant to prove dismissal, but he had not provided any witness statement to the Tribunal to support his claim and there was no agreed bundle of documents.
10. Whilst we were finalising our deliberations the clerk informed us that Ms Callaghan, who had represented the respondent at the previous preliminary hearing, had responded to the clerk’s email and informed the clerk that the respondent was in voluntary liquidation and so thought that the claim was all dealt with and didn’t know the hearing was going ahead. She said that she really didn’t have anything to do with the respondent now. She confirmed that the claimant was aware of the liquidation. Ms Callaghan followed up the call with an email confirming the voluntary liquidation of the respondent which contained a link to the Companies House website. This Companies House website confirmed that the respondent was in liquidation and that liquidators had been appointed.
11. We considered, when coming to our judgment, that there were no correspondence on the file from either the claimant or the respondent (or its liquidators) regarding the respondent’s liquidation and/or the final hearing for the claim which had been listed and that the liquidation had occurred some months before in May 2023.
12. No postponement was requested by anyone from the respondent or its liquidators or the claimant post the liquidation of the respondent or on the first day of the hearing.
13. Having considered the overriding objective, all the information available to us and after the making of the enquires detailed above we have decided to dismiss the claim in full.

Employment Judge McCarthy

Date 14 September 2023

JUDGMENT SENT TO THE PARTIES ON

21 September 2023

FOR THE TRIBUNAL OFFICE

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