



EMPLOYMENT TRIBUNALS

Claimant: Ms J Stepinska
Respondent: Cake Box Southend Limited
Heard at: East London Hearing Centre (via CVP)
On: 6 December 2023
Before: Employment Judge Yale

Representation

Claimant: Absent
Respondent: Mr Y Mahmood (Litigation Consultant)

JUDGMENT

The Claimant's claim under the Working Time Regulations 1998 is dismissed.

REASONS

1. It is accepted the claimant worked for the respondent. On her ET1 the claimant failed to provide dates of employment but she said she had worked for the respondent for just over a year. The claimant initially brought a claim for unfair dismissal and breach of the Working Time Regulations 1998 for an alleged failure by the respondent to allow her to take breaks as required by the Regulations.
2. The claimant engaged ACAS on 5th July 2023 and a certificate was issued on 10th July 2023. The claimant lodged her claims the same day by way of an ET1 dated 10th July 2023.
3. Having lodged that ET1, no further communication was received by the Tribunal or respondent from the claimant.
4. On 18 October 2023, a Strike Out warning was sent to the claimant in relation to the unfair dismissal claim, as she had not shown qualifying service. No response was received. On 9th November 2023 the unfair dismissal claim was struck out but paragraph 7 of that

judgment made clear the Working Time Regulations claim would remain listed today. The case was listed as a final hearing but there was a preliminary time limit point to consider, as the respondent asserted the claimant's employment ended in 2021.

5. The notice of hearing for today's hearing was sent to the claimant on 15th August 2023 by way of an e-mail timed at 17:03 hours. It was sent to the e-mail address on the front of the file, which was provided in the ET1. There is no evidence before me as to why that may not have been received by the claimant. Indeed, the respondent was plainly aware of the hearing as their representative and witness had attended. In the circumstances, I infer the claimant was aware of today's date.

6. At the start of the hearing at 10am the claimant had not dialled in. I asked my clerk to make enquiries of the claimant's whereabouts on any telephone numbers she had provided. He was not in a position to call her but e-mailed her at 10:07 hours. In that e-mail she was told the hearing was starting "now" and she should dial in. The e-mail also had a copy of the original hearing notice attached. I asked a member of listings to call the claimant on any telephone numbers we had for her. Those calls went unanswered. Voicemail messages were left but there was no response by 10:30am, when I asked for the CVP hearing to be opened to the respondent.

7. The respondent invited me to exercise my discretion under rule 47 to dismiss the claim in the absence of the claimant. Rule 47 states:

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.

8. The claimant does not appear to have engaged with the process at all, having lodged an ET1. She did not even respond to a Strike Out warning in relation to her unfair dismissal claim and that claim was struck out as a result. There has been no correspondence from her. The respondent confirmed she had not been engaging, or in any form of contact, with them at all. Every possible means of contacting her was explored today to no avail.

9. In all the circumstances, bearing in mind the overriding objective, the failure of the claimant to actively pursue the claim, the lack of response to an e-mail and calls made this morning, her previous failure to respond to a Strike Out warning and her failure to attend today's hearing without any apparent attempts to explain her absence, in my judgment, it was appropriate to exercise my discretion under rule 47 to dismiss the claim.

**Employment Judge Yale
Dated: 6 December 2023**