



EMPLOYMENT TRIBUNALS

Claimant: Ms Andrea Bereczne Bacso
Respondent: Shine Line Ltd
Heard at: East London Hearing Centre (by CVP)
On: 10 April 2024
Before: Employment Judge B Beyzade

Representation

For the Claimant: Not present or represented
For the Respondent: Ms Glynis Duffy, Litigation Consultant

JUDGMENT

The Judgment of the Tribunal is that:

- 1) The claimant being neither present nor represented during the Final Hearing listed at 2pm on 10 April 2024 at the East London Hearing Centre by Cloud Video Platform and at a point in excess of 78 minutes after the time set for the Final Hearing, on the Clerk to the Tribunal having contacted the claimant's representative by telephone at 2.09pm and having contacted the claimant by telephone at 2.46pm, and on the claimant not having responded to email correspondence sent by the Clerk to the Tribunal at 2.51pm on 10 April 2024, and the claimant not having otherwise communicated with the Tribunal in relation to her non-attendance at the Final Hearing thereafter; on the claimant's non-attendance; and on the respondent's application, and having considered the content of the Tribunal file, the Tribunal dismisses the claimant's claim in terms of Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Summary of claim and procedure to date

1. The claimant lodged a claim on 08 December 2023 for arrears of pay (the claimant stated at section 8.2 of her ET1 Form “I was never paid for the jobs I went to do as a self-employer for this company”), which the respondent resisted.
2. Notice of today’s Final Hearing by Cloud Video Platform (“CVP”) was sent to the parties on 26 January 2024 together with joining instructions.

Final Hearing on 10 April 2024

3. The case called for Final Hearing at the East London Hearing Centre by CVP on 10 April 2024 at 2pm.
4. There was no appearance for or on behalf of the claimant.
5. The respondent was represented by Ms Glynis Duffy (Litigation Consultant).
6. The respondent’s representative had sent a text message to the claimant at 7.28pm on 08 April 2024 and an email on the same date at 7.51pm inviting the claimant to contact them to discuss certain issues in the claim. The respondent’s representative sent email correspondences to the Tribunal on 09 April 2024 at 11.06am, 3.36pm and 5.12pm. I was advised that the claimant did not respond to any of the correspondences from the respondent’s representative.
7. The case file records that Notice of the date and time set down for Hearing was sent to the claimant and the respondent on 26 January 2024 at the correspondence address provided by them to the Employment Tribunal for the purposes of receiving such communications. No return of the Notice of Hearing issued to the claimant, or the respondent has been received by the Tribunal.
8. Except as referred to in respect of the telephone correspondence below, neither the claimant nor the claimant’s representative provided any additional information or documents relating to the claimant’s claim or to communicate that they will not be attending the hearing (or any reasons in respect thereof).
9. On the sitting Judge’s directions, the Clerk to the Tribunal checked and confirmed that neither the claimant nor the claimant’s representative had contacted the Tribunal in connection with the Hearing since correspondence was sent to parties by the Tribunal by email on 26 January 2024.
10. On the sitting Judge’s direction, the Clerk to the Tribunal attempted to communicate with the claimant and the claimant’s representative.
11. The claimant’s representative, Ms Nehmat Hiridjee was contacted by the Clerk to the Tribunal at 2.09pm on 10 April 2024. The claimant’s representative advised that they were not in the country and they will not be attending the hearing.

12. The Tribunal sat at 2.16pm and then adjourned briefly at 2.24pm and sat again at 3.00pm to afford the claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding her non-attendance.
13. The Clerk to the Tribunal contacted the claimant by telephone at 2.46pm to advise that she was required to join the hearing by 2.50pm or the hearing would proceed in her absence.
14. The claimant and the claimant's representative were advised by email sent to them by the Clerk to the Tribunal at 2.51pm on 10 April 2024 that if the claimant or the claimant's representative failed to attend the Hearing by 2.55pm (on 10 April 2024), the Hearing will proceed in their absence and the claim may be dismissed. A copy of Notice of Hearing which contained the log-in details of the CVP hearing was attached to that email.
15. Accordingly, after a brief adjournment, the Tribunal reconvened at 3.00pm.

Dismissal of claim pursuant to Rule 47 of the Employment Tribunal Rules

16. At around 3.18pm and in light of the claimant's unexplained non-attendance and in the absence of a good reason (which was satisfactory to the Tribunal), and on the respondent's application, the Tribunal dismissed the claimant's claim in terms of Rule 47 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules"). Rule 47 of the ET Rules provides:

"47. 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."
17. I took into account the nature of the claimant's complaints, the issues that the Tribunal were required to investigate and determine (insofar as they were possible to ascertain from the pleadings), and the content of the Claim Form and Response. I considered the documents and correspondences on the Tribunal file. I was satisfied that the claimant had been afforded ample opportunity to attend the Final Hearing and she had failed to attend the Hearing on 10 April 2024. I took into account the Tribunal's overriding objective (Rule 2 of the ET Rules).
18. I consider that the claimant's non-attendance is capable of being explained by her having decided not to pursue her claim now that she knows about the potential issues outlined in the Claim Form, the Response and the correspondences between the parties and the Tribunal. That explanation is consistent with the claimant's apparent failure to communicate with the Tribunal.
19. No satisfactory explanation has been put forward explaining why the claimant had not attended the hearing.

20. I am satisfied that the Tribunal has made all enquiries that may be practicable about the reasons for the claimant's absence.
21. The claimant did not attend today's hearing and Rule 47 of the ET Rules specifically deals with non-attendance at a hearing. The respondent's representative submitted that the claim could not be heard in the absence of the claimant, and that the claimant was required to give evidence in relation to the identity of the correct employer (and the correct respondent) and the evidence in relation to the claimant substantive claim (including the screenshots she speaks of in her Claim). In addition, the claimant is required to give evidence and to answer questions in relation to whether or not she was a worker in terms of section 13 of the Employment Rights Act 1996.
22. In my judgment, it was not appropriate to hear the claimant's claim in the claimant's absence given the nature of the claim and the issues before the Tribunal. I therefore dismissed the claimant's claim. Prior to dismissing the claim, I considered and gave full effect to the Tribunal's overriding objective (Rule 2 of the ET Rules). Dismissing this claim under Rule 47 of the ET Rules is proportionate and in accordance with the Tribunal's overriding objective in all the circumstances.

Employment Judge B Beyzade
Date: 10 April 2024