



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr S Shah

**Respondent:** The Redundancy Payment Service

**Heard at:** Watford (by CVP)

**On:** 29 April 2024

**Before:** Employment Judge Dick

## Representation

Claimant: Did not attend

Respondent: Mr P Soni (Senior Employment Tribunal Representative)

# JUDGMENT

The claim is dismissed under rule 47.

# REASONS

1. This case was listed by order of my colleague Employment Judge Ord, via an order for postponement by my colleague Employment Judge Alliott, for a preliminary hearing to determine the issue whether the claimant was an employee of Articulate Finance Ltd, an insolvent company for which the claimant was the sole director and shareholder and which employed nobody or, depending on the result of the determination by the Tribunal, nobody but the claimant. If the claimant was an employee, he would be entitled to claim a redundancy payment etc. from the respondent; if he was not an employee he would not be so entitled.
2. The claimant did not attend the hearing today. My clerk tried both the telephone numbers which the Tribunal has for the claimant and was unable to get through.
3. On 29 January 2024, the claimant had emailed the Tribunal to say that that his representative had sadly died, enclosing proof. Unfortunately, despite that, further correspondence from the Tribunal, including the original notice of this hearing, continued to be sent to the late representative's address rather than to the claimant personally, so it does seem clear, as Mr Soni for the respondent fairly pointed out, that the claimant was *initially* unaware of the

date of today's hearing. In the normal run of things, of course, that might be a good reason for postponing the case, but there is more here.

4. Mr Soni told me the following. On 24 April he emailed the claimant (at the email address which the claimant used on 29 January and which indeed the claimant had provided on the claim form). The email made clear to the claimant that there was to be a hearing today. Mr Soni sent other emails over the course of the week. He received no response.
5. I understand from my clerk that "joining instructions" for this video hearing were sent to the claimant last Friday and this morning.
6. I considered rule 47:

Non-attendance

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.

7. In my judgment the appropriate course in this case was to dismiss the claim under rule 47. It was not appropriate to attempt to determine the preliminary issue on the evidence in the claimant's absence, since the determination would require evidence from the claimant which had not been provided. The other alternative, a postponement, was not in the interests of justice, for the following reasons.
8. I considered that the claimant was or should have been aware of the hearing date. I also took some account of my preliminary view that the claim was, in my judgment, fairly unlikely to succeed, though I stress that this was not determinative. More significant, in my view, was that this is a case that has been going on since early 2022 (in the Tribunal; even earlier than that from the parties' point of view). This hearing had already been postponed once on account of the claimant being unwell (though clearly he was not at fault for that).
9. I took account of the fact, as Mr Soni fairly told me, that the claimant had, at least until January, been engaged with the case. I noted also that the claimant does appear to have been genuinely and seriously unwell in the past. Although his 29 January email stated that he would be undergoing surgery for leg ulcers and vascular complications "the recovery of which can take several months if [he could] manage to recover", no update since then appears to have been provided to the Tribunal.
10. Ultimately I accepted the submission made on behalf of the respondent that no further delays were appropriate in this case; the parties were entitled to a resolution without further delay. In the absence of good grounds for a postponement, and given that it was also not appropriate to attempt to proceed with the substantive hearing, balancing the factors in paragraph 7 against those in paragraph 8, I considered that it was in the interests of justice to dismiss the claim.

11. Of course, if it turns out that the claimant was unwell, and that there were good reasons both for him (i) not attending the hearing and (ii) not informing the Tribunal in advance about that, then it will be open for him to ask me to reconsider this decision, though this should not be taken as any indication about what the result of any such request would be. Any such request would likely need to be accompanied by evidence as well as an explanation covering (i) and (ii) above.
  
12. I had indicated at the hearing that, having given oral reasons I would not provide written ones, but on reflection, given the claimant's absence I thought it better to provide reasons in writing.

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Employment Judge Dick

29 April 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

12/6/2024

N Gotecha

FOR THE TRIBUNAL OFFICE