



EMPLOYMENT TRIBUNALS

Claimant: Mr Jason Khan

Respondents: (1) Xtreme Adrenalin Ltd
(2) The Secretary of State for Business & Trade

Heard at: East London Hearing Centre (by CVP)

On: 04 March 2024

Before: Employment Judge B Beyzade

Representation

Claimant: Not present or represented
1st Respondent: Not present or represented
2nd Respondent: Mr Parag Soni, Lay Representative

JUDGMENT

The Judgment of the Tribunal is that:

- 1) The claimant and the first respondent being neither present nor represented during the Final Hearing listed at 12 noon on 04 March 2024 at the East London Hearing Centre by way of a hybrid hearing and at a point in excess of 25 minutes after the time set for the Final Hearing, and the claimant not having responded to email correspondence sent by the Clerk to the Tribunal at 10.41am on 04 March 2024, and the claimant not having otherwise communicated with the Tribunal in relation to his non-attendance at the Final Hearing thereafter; on the claimant and the first respondent's non-attendance; and on the second 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 09 November 2023 for arrears of pay, holiday pay, notice pay, and a redundancy payment. The claimant also ticked the relevant box to indicate that he was making another type of claim which he stated was "discrimination against a company director" (the claimant also stated in section 8.2 of his ET1 Form that he was owed one month's salary, notice pay, outstanding holiday pay and

redundancy pay as he had been working since 2004), which the second respondent resisted. The second respondent indicated on their Response Form presented on 06 December 2023 that the claimant had previously made claims to the Redundancy Payments Service (“RPS”) and that those claims were rejected as the RPS did not consider that the claimant was an employee of the first respondent as defined in the Employment Rights Act 1996. The first respondent did not enter a response.

2. Notice of today’s Final Hearing was sent to the parties on 28 December 2023. The Notice of Hearing stated, “The claim will be heard by an Employment Tribunal at East London Tribunals, 2nd Floor Import Building, 2 Clove Crescent, London, E14 2BE on 4 March 2024 at 12:00 or as soon thereafter on that day as the Tribunal can hear it.”
3. By an application dated 27 February 2024 sent at 3.34pm the second respondent’s representative requested the Tribunal to convert the Final Hearing listed today to a video hearing or hybrid hearing. The application referred to the fact that Mr Parag Soni, who was representing the second respondent had contracted COVID-19. The claimant replied by email sent on the same day at 5.14pm requesting another hearing date to be listed “... as the appointment has been cancelled by the respondent.” Regional Employment Judge Burgher considered the application and the claimant’s response and by a letter dated 01 March 2024 he directed that today’s hearing be converted to a hybrid hearing. He explained that it was in accordance with the overriding objective for the hearing to be concluded without further delay. His directions were accompanied by the CVP hearing log-in details to enable the respondent to attend by CVP.
4. The claimant sent an email to the Tribunal copied to the second respondent on Friday 01 March 2024 at 4.24pm advising “As I have confirmed many times I cannot I tried to get hold of the tribunal and advised the RPS. I will now be out of the UK.” The claimant sent a further email on the same day at 5.08pm advising that he had contacted the Tribunal by telephone and advised that he had left a message with Ruel (03003230196) to advise that he wished for the hearing to be postponed (and he was advised to send an email to the Tribunal). The claimant stated in his email “I WILL NOW BE OUT OF THE COUNTRY ON MONDAY 4TH MARCH until Thursday 7th March. In the interests of justice I wish to attend a hearing in my case and so does a work colleague, so please could you adjourn this to a future date. He/we were forced to change his plans following the respondents confirmation inability to attend the hearing in person and my now unavailability in person also.”
5. The application was referred to me on the morning of 04 March 2024. At 10.41am on 04 March 2023, the Clerk to the Tribunal sent an email to the claimant copied to the second respondent advising that the claimant’s application had been refused, setting the reasons for refusal, and advising that “The hearing is a hybrid hearing on the basis that the Claimant requested to attend in person. There are video hearing details that were sent to the parties previously (please see attached). The Claimant and Respondents are expected to attend the hearing at 12 noon today, in the absence of which the hearing will continue. In the Claimant’s absence the claim may be dismissed.”

Final Hearing on 04 March 2024

6. The case called for Final Hearing at the East London Hearing Centre by way of a hybrid hearing on 04 March 2024 at 12 noon. The claimant was due to attend the hearing in person, whereas the second respondent was to attend the hearing by CVP.
7. There was no appearance for or on behalf of the claimant.
8. The first respondent did not appear and they were not represented.
9. The second respondent were represented by Mr Parag Soni (lay representative), who had attended the hearing by CVP.
10. The case file records that Notice of the date and time set down for Hearing was sent to the claimant and the respondents on 28 December 2023 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 respondents have been received by the Tribunal.
11. Except as referred to in respect of the postponement application sent on Friday 01 March 2024 at 4.24pm which was refused as set out above (this being the last correspondence received by the Tribunal from the claimant prior to this hearing), the claimant did not write to the Tribunal to communicate that they will not be attending the hearing.
12. On the sitting Judge's directions, the Clerk to the Tribunal checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Hearing since correspondence was sent to parties by the Tribunal by email on 04 May 2024 at 10.41am.
13. On the sitting Judge's direction, accordingly, the Clerk to the Tribunal attempted to communicate with the claimant. The claimant was advised by email sent at 10.41am on 04 March 2024 that the claimant must attend the hearing listed on 04 March 2024 at 12 noon, in the absence of which the Hearing will proceed and the claim may be dismissed.
14. The Tribunal sat at 12.00 and then adjourned briefly at 12.05 and sat again at 12.10 to afford the claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding his non-attendance. Accordingly, after a brief adjournment, the Tribunal reconvened at 12.10.

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

15. At 12.28 and in light of the claimant's non-attendance and in the absence of a good reason (which was satisfactory to the Tribunal), and on the second 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."
16. 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 he had failed to attend the Hearing on 04 March 2024. I took into account the Tribunal's overriding objective (Rule 2 of the ET Rules).

17. I consider that the claimant's non-attendance is capable of being explained by his having decided not to pursue his claim now that he 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 after having been sent an email from the Clerk to the Tribunal sent at 10.41am today.
18. No other explanation (or in any event no other satisfactory explanation) has been put forward explaining why the claimant had not attended the hearing. There was no evidence that the claimant was in fact abroad before the Tribunal (he had not supplied a copy of his flight tickets, booking confirmation or any other evidence). Furthermore, the claimant had not suggested previously that he was abroad on the date and time set down for the hearing despite having been sent the Notice of Hearing on 28 December 2023.
19. I am satisfied that the Tribunal has made all enquiries that may be practicable about the reasons for the claimant's absence.
20. The claimant did not attend today's hearing and Rule 47 of the ET Rules specifically deals with non-attendance at a hearing. The second respondent's representative submitted that the claim could not be heard in the absence of the claimant, that a 234-page bundle had been prepared and the claimant is required to give evidence and to answer questions including in relation to why he believed he was an employee of the first respondent (and not a director).
21. 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 is proportionate and in accordance with the Tribunal's overriding objective in all the circumstances.

Employment Judge Beyzade
Date: 7 June 2024