



EMPLOYMENT TRIBUNALS

Claimant: Mr N Ranjan

Respondent: Mr S Fernando

Heard by video On: 25 June 2024

Before: Employment Judge Corrigan

Representation

Claimant: No appearance

Respondent: Mr Fernando in person

Interpreter for the respondent: No attendance

Judgment

1. The claim is dismissed due to the claimant's failure to attend the hearing (by virtue of rule 47 of the Employment Tribunal's Rules of Procedure)

Reasons

2. This was the second attempt at having a final hearing in this matter. On the last occasion (29 September 2023) the matter was adjourned to enable the parties to exchange information and arrange interpreters.
3. The tribunal had not been successful in obtaining a Malayalam interpreter by 2.30pm on 24 June 2024, with the agency stating they are hard to source. The tribunal emailed the claimant on 24 June 2024 to explain the situation and, upon the advice of the agency, to ask if he also speaks Tamil as it might be easier to find a Tamil interpreter. In response, at 17.30 on 24 June 2024, the claimant responded saying he had not been able to get a day off for the hearing date. He

said “we tried to get it. But unfortunately, we couldn’t make it”. The implication was that he would not be attending.

4. The claimant did not attend. The clerk attempted to call him this morning, the phone was picked up, but the person hung up when the clerk asked for the claimant. A second attempt went to answer phone.
5. Rule 47 of the Employment Tribunals Rules of Procedure state that if a party fails to attend the hearing the Tribunal may dismiss the claim or proceed with the hearing in the absence of the party.
6. The respondent did attend and, in the belief that the Sinhalese interpreter who had been assigned was also present, I initially intended to hear the matter in the claimant’s absence, based on the information he had already provided, and subject to any comments by the respondent. I felt that was proportionate as the interpreter had been arranged and the respondent was present.
7. However, the respondent’s interpreter also did not attend. Initially he made contact at 10.48 and said he thought the hearing was at 1pm, though the Tribunal’s timesheet stated 10.00-13.00, and that he had not had the booking confirmation from the agency. I agreed to delay the start of the hearing to see if he, or an alternative interpreter, could attend, even if that was 1pm or soon after. However, the booked interpreter then confirmed (relayed to me at 1.10pm) that he would not be attending at 1pm either. The attempt to obtain a different interpreter was also unsuccessful.
8. In any event the respondent had other commitments later in the afternoon and was not able to wait indefinitely. Due to the way the matter developed my contact with the respondent was via the clerk and the hearing did not ultimately commence.
9. I reconsidered whether to dismiss the claim or adjourn to a new date.
10. I decided to dismiss the claim. The claimant only informed the tribunal after the close of business the day before that he would not be attending. He did not copy in the respondent. His reason was that he could not get the day off. He did not ask for a postponement or give any assurance that this would not be a problem again on a future date. He did not make the tribunal aware in good time and ask for a postponement to ensure that the hearing today was not wasted. He has not explained when he asked for the time off or why it was refused (or produced any supporting evidence). He had also known that the tribunal was trying to arrange an interpreter for him at their expense. It’s not clear whether the claimant would have informed the tribunal at all if they had not made contact about the interpreter. Given the explanation offered there is no guarantee that the same would not occur at a future hearing, incurring wasted costs if the tribunal does book an interpreter. It also appears the claimant hung up on the

clerk when he tried to make contact today. I also note that he had not complied with the order to prepare and exchange a witness statement by 10 November 2023.

11. Despite the above I was willing to hear the matter today, based on the information already provided by the claimant, if the respondent's interpreter had been booked and expenses incurred. However, I take a different view as to whether it is appropriate to postpone the matter incurring further expense, in the absence of a request by the claimant, and without any guarantee that he will attend on a future date.
12. I also note for information that the first issue is whether or not the correct employer was Kiki's FDO Limited, and that company is showing as dissolved on Companies House (despite the respondent being aware of this claim). This does not affect my decision above, as the claimant has claimed against Mr Fernando personally, but if the tribunal were to find the correct employer was the limited company, then it would not be able to proceed unless the company is restored to the Companies House register.

Employment Judge Corrigan
25 June 2024

Sent to the parties on
26th June 2024

For the Tribunal Office

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>