



EMPLOYMENT TRIBUNALS

Claimant: Ms N Khosa
Respondent: BBK Group
Heard at: Reading Employment Tribunal **On:** 1 July 2024
Before: EJ Milner-Moore

Representation
Claimant: Did not attend
Respondent: Mr Akram (Counsel)

JUDGMENT

1. The complaint of unauthorised deductions from wages fails and is dismissed.
2. The complaint of direct race discrimination fails and is dismissed.

REASONS

1. This case was listed for a hearing to consider claims for direct race discrimination and for unauthorised deductions from wages.

Procedural history

2. The ET1, filed on 31 March 2023, alleged that the Claimant was recruited by the Respondent to work as a driver on the agreed basis that she would work varying shifts, starting no earlier than 6 a.m. She says that she attended for work with the Respondent on 19 December 2022 but was then told that she would be required to work shifts which could commence at 4 a.m. She alleges that when she disputed this she was then sent home and never received payment for her attendance on 19 December 2022. She alleges that she was treated in this manner because she is Indian.
3. The ET1 was sent to the Respondent at the address provided by the Claimant on 14 April 2023. No response was received and so, on 21 September 2023, it was resent to the Respondent at the registered office address which appears on the register at Companies House. The accompanying letter made clear that if the Respondent wished to defend these proceedings it would need to submit an ET3 form explaining why it

had not been submitted within the original time limit and including a request that it be accepted out of time. On 26 September 2023, an ET3, completed in manuscript, was submitted by the Respondent's Head of Sales and Contracts. The ET3 simply denied that the Claimant was an employee of the Respondent. It included no explanation for the delay in responding and it made no application for the ET3 to be accepted late. On 12 February 2023, the Tribunal wrote to the Respondent's registered address rejecting the ET3, advising that the Respondent's future participation in any hearing would be a matter of judicial discretion and drawing the Respondent's attention to the options available to challenge the rejection decision, namely an application for reconsideration or an appeal. No application for reconsideration was submitted.

4. On 29 April 2024, pursuant to rule 21 of the Tribunal's 2013 Procedure rules, the case was listed for a three hour hearing to consider issues of liability and remedy.
5. On 1 July 2024, the Respondent attended, represented by Counsel, having submitted by email that morning a further ET3 responding to the claims. My assessment was that it would not have been open to me to have regard to that ET3, given that an earlier ET3 had been rejected and there having been no application for reconsideration of that rejection. I would, however, have been obliged to give consideration to whether, and to what extent the Respondent should be permitted to participate in the hearing applying rule 21 and the principles set out in **Office Equipment Systems Ltd v Hughes [2019] ICR 2019**.
6. However, the Claimant did not attend the hearing. Efforts were made by the Tribunal administration to contact the Claimant by phone and by email, without success. There was nothing on file to indicate any reason for the Claimant's non-attendance. The Respondent's counsel confirmed that the Respondent had had no contact with the Claimant and was not aware of any reason for her non-attendance.
7. Under rule 47 of the Tribunal's procedure rules:

"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. I considered how to exercise the discretion granted to me under rule 47. I considered whether to adjourn the hearing. However, having had regard to the overriding objective and the lack of any explanation for the Claimant's non-attendance, I decided that it would not be right to adjourn.
9. I bore in mind that, under sections 13 and 136 of the Equality Act 2010, it was for the Claimant to prove facts from which the tribunal could conclude, in the absence of any other explanation, that that the Respondent had treated her less favourably on grounds of her race in the manner alleged in the ET1. Similarly, in so far as the Claimant was asserting that she was entitled to be paid wages for her attendance on 19 December 2022, it was for her to provide evidence in support of this claim and to provide evidence

of the amounts due. However, the Claimant had not attended to provide evidence in support of any of the matters alleged in the ET1 nor had she submitted any documentary evidence. In the circumstances, I considered that the claims should be dismissed.

10. If the Claimant has a good explanation for her failure to attend today's hearing it will be open to her to seek a reconsideration of this judgment.

Employment Judge Milner-Moore

Date: 1 July 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
21/8/2024 .

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FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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