



EMPLOYMENT TRIBUNALS

Claimant: Miss C Wray

Respondent: Cheshire Vehicle Rentals Macclesfield Limited

Heard at: Manchester (by CVP)

On: 23 October 2024

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: Not present or represented

Respondent: Not present or represented

JUDGMENT

The claimant's claim is dismissed pursuant to Rule 47 of the Employment Tribunal Rules of Procedure 2013 on her non-attendance at the hearing.

REASONS

Introduction

1. The claimant lodged an Employment Tribunal claim on 11 November 2023. She complained that she had been constructively dismissed by the respondent on 31 May 2023 and that that dismissal was unfair.
2. The respondent filed a response but did not set out a cogent defence to the claim. The response simply said that the respondent had ceased trading, which the claimant disputes.
3. Judgment in favour of the claimant could not be given without a hearing for 2 reasons.
4. The first was that the claim was filed out of time. Allowing for the extension of time for ACAS early conciliation, the claim should have been filed by 10 November 2024. It was filed one day late on 11 November 2024. For the claim to proceed, the claimant would need to satisfy the Tribunal that it was not reasonably practicable for

her to have presented the claim in time and that it was presented within a further reasonable period.

5. The second reason was that if the claim were allowed to proceed out of time the onus was on the claimant to establish that she had been constructively dismissed. She would need to provide evidence to satisfy the Tribunal that the respondent had engaged in conduct which fundamentally breached her employment contract entitling her to resign.

6. A hearing took place before Employment Judge Holmes on 17 June 2024. It was intended as a final hearing. The claimant attended but there was no evidence before the Judge about the 2 matters above nor about the remedy which the claimant was seeking. The respondent did not attend.

7. Employment Judge Holmes postponed the final hearing until today. He made case management orders requiring the claimant to send a witness statement to the Tribunal and the respondent by the 15 July 2024. The witness statement was to set out a full account of the conduct on the part of the respondent relied on by the claimant which led her to resign; the facts and matters relied on as making it not reasonably practicable for her to file her claim in time; and full details of the sums the claimant was claiming by way of compensation. The claimant was to attach all relevant documents to her witness statement.

8. As at today, the claimant has not provided the witness statement ordered by Employment Judge Holmes to the Tribunal.

The hearing today

9. Employment Judge Holmes's Case Management Summary was sent to the parties on 1 July 2024. It included confirmation of the date and time of today's hearing. The hearing was due to take place by CVP video link. The parties were sent the link to join the hearing by email on the afternoon before the hearing.

10. Neither party had joined the hearing by 10 am. The Tribunal attempted to contact the parties by telephone but there was no answer and no facility to leave a message in either case.

11. I adjourned the hearing until 10.30am and directed that an email be sent to the parties. It explained that the hearing would start at 10.30. a.m. and that if the claimant did not attend it was likely her claim would be dismissed. I advised that if the claimant was unable to attend for health or other reasons she must apply urgently to postpone the hearing giving reasons.

12. No communication was received from the claimant or the respondent by 10.30 a.m. when the hearing resumed.

Decision

13. Rule 47 of the Employment Tribunals Rules of Procedure 2013 permits a Tribunal to dismiss a claim or proceed with a hearing in the absence of a party if a party fails to attend or be represented at a hearing. Before doing so, the Tribunal is

required to consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

14. The Tribunal had no information about the reason for the claimant's non-attendance. The claimant had in March 2024 referred in correspondence with the Tribunal to the fact that she was receiving care for a serious illness. That had not prevented her from attending the hearing before Employment Judge Holmes in June 2024. There was no medical evidence before me nor any application to postpone based on any medical condition.

15. I therefore considered whether it was in the interests of justice to dismiss the claim.

16. For the 2 reasons identified above, I cannot simply give judgment for the claimant in her absence. The starting position is that the claimant's claim is out of time. The onus is on her to provide evidence to satisfy the Tribunal why it was not reasonably practicable for her to file the claim in time and that the claim was filed within a further reasonable period. If the Tribunal was satisfied on the time limit point and allowed the claim to proceed the onus would then be on the claimant to provide evidence to satisfy it that her resignation was a constructive dismissal. Her absence means there is no evidence before me relating to those 2 points.

17. The documents before me are limited to the Tribunal file. The central documents are the claimant's claim form and the respondent's response together with the P45 and final pay slip provided by the claimant at the Tribunal's request. They provide no evidence about the time limit point and only brief details of the conduct relied on as amounting to a repudiatory breach by the respondent. There is no evidential documentation other than the P45 and final payslip.

18. In the circumstances, the claim is dismissed under rule 47 for non-attendance at this hearing. It is open to the claimant to apply for reconsideration of this Judgment within 14 days of the date the Judgment is sent to the parties if there is some reason why it is necessary in the interests of justice for the Judgment to be reconsidered.

Employment Judge McDonald

Date: 23 October 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
25 October 2024

FOR THE TRIBUNAL OFFICE

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