



EMPLOYMENT TRIBUNALS

Claimant: Mr M Taylor

Respondent: Active Community Development CIC

Heard at: London South (Croydon)

By: CVP

On: 13th December 2024

Before: Employment Judge L Clarke

Appearances

For the claimant: not attending

For the respondent: not attending

JUDGMENT

The judgment of the Tribunal is as follows:

Postponement/Adjournment

(1) Both the Claimant and Respondent's requests for a postponement are refused.

Strike Out

(2) The complaints of (1) unpaid wages and (2) unpaid holiday pay are struck out under Employment Tribunal Rules 37(1)(c) because the claimant has not complied with the Tribunal Rules or a Tribunal order.

REASONS

1. The Claimant was employed by the Respondent from 1st June 2018 to 26th June 2023, when he was made redundant. Early conciliation started on 19th July 2023 and ended on 2nd August 2023.
2. A claim form was presented on 4th October 2023 under claim number 2305509/2023 but was rejected by the Tribunal on 18th December 2023 as the name of the respondent on the claim form did not match the name of the respondent on the ACAS certificate.
3. The current claim was received by the Tribunal on 1st January 2024 and included claims for unpaid wages, holiday pay and a claim for a redundancy payment. The Respondent entered a response in time on behalf of "Active Community Development" which did not dispute the claim for a redundancy payment but sought to defend the remaining claims on the basis of lack of jurisdiction (the claims being out of time) and in respect of the holiday pay claim, in substance (it being said that the Claimant had taken his holiday entitlement).
4. The Tribunal wrote to the parties on 21st March 2023 and gave directions, including directing the Claimant to file a short statement setting out why he did not present the claim within the 3-month limitation period, which statement was to be filed 4 weeks before the hearing. The hearing was originally listed to take place on 9th July 2024 but, by notice dated 15th April 2024, was re-listed to be heard on 13th August 2024.
5. On 9th July 2024 the Tribunal sent further correspondence to the parties entitled "Pre-hearing check" reminding them of the hearing on 13th August 2024 and that they must comply with any case management directions such as the exchange of witness statements.
6. No statement was received from the Claimant prior to the final hearing on 13th August 2024.

7. On 13th August 2024 the Claimant attended in person. The Respondent did not attend but had written to the Tribunal requesting a postponement due to work commitments.
8. Employment Judge Abbott gave judgment for the Claimant on the redundancy claim against "Active Community Development CIC" and adjourned the remaining claims as he did not have evidence and supporting documents to determine them and because he considered that the Respondent would be substantially prejudiced if the Claimant was allowed to adduce evidence during the hearing. EJ Abbott made case management orders which listed a final hearing for today (13th December 2024). It appears from the listing stencil filed by EJ Abbott that the hearing date of 13th December 2024 was set at the hearing.
9. The directions given on 13th August 2024 included a requirement that the Claimant send to the Respondent a witness statement by 17th September 2024 setting out details of his claims, an explanation as to why it was not reasonably practicable for him to bring his claims in time, and copies of all supporting evidence. The Respondent was required to send a statement in response by 15th October 2024.
10. The judgment and case management order dated 13th August 2024 were sent to the parties by e-mail.
11. No statement or other document has been filed by the Claimant at the Tribunal.
12. The Respondent sent an e-mail to the Tribunal on 15th October 2024 with a substantive response to the Claimant's claims. It does not refer to any statement from the Claimant. The e-mail further asserts, notwithstanding the response previously filed, that Active Community Development CIC has never traded, that the Claimant was not an employee of that Company, and that the Company had not filed any returns. It is not clear that this e-mail was copied to the Claimant.
13. The claim came before the Tribunal for a Final hearing today (13th December 2024). Neither the Claimant nor the Respondent attended.

14. The Respondent sent an e-mail to the Tribunal at 15:45 on 12th December 2024 stating that he would not be able to attend the hearing as he has to work and has no-one to cover him and no other option. He requested a postponement of the hearing. The Tribunal notes that this is the same reason given by the Respondent for not attending the hearing on 13th August 2024 and requesting a postponement.

15. The Tribunal clerk contacted the Claimant by telephone shortly before the hearing when he failed to log on and was advised by the Claimant that he did not know about the hearing. The Claimant then sent an e-mail to the Tribunal at 09:58 stating:

"I'm really sorry I've just received a phone call from someone in your team advising that the court hearing is today at 10am. My apologies I am on shift at work, I haven't seen the emails/times/date and I won't be able to make the hearing.

It's completely my fault, I'm extremely sorry to waste anyone's time, I obviously would like to be at the hearing at a later date if possible. I've waited a long time and the past date got moved due to a non attendance from Mr Castle, so I'm hoping this can happen on my behalf.

My apologies, I work in emergency services so work can get in the way."

16. By e-mail timed at 10:21 the Claimant was advised by the Tribunal that I was considering striking out his claim and requesting that he provide information to the Tribunal within 2 hours regarding his compliance with the case management order of 13th August 2024 and the reason why he was unaware of the hearing date today that was set at the hearing on 13th August 2024 at which he was present and notified to him in writing by way of the case management order.

17. No response had been received to the e-mail by 13:15.

The postponement requests

18. I considered both the Claimant's and the Respondent's applications to postpone/adjourn the hearing.

19. Rule 30A of the of the Employment Tribunals Rules of Procedure states:

(1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.

(2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where –

(a) all other parties consent to the postponement and –

(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or

(ii) it is otherwise in accordance with the overriding objective.

(b) The application was necessitated by an act or omission of another party or the Tribunal; or

(c) There are exceptional circumstances.

20. Both parties have sought a postponement of the hearing less than 7 days in advance of the hearing. As both parties have sought to postpone the hearing, I am satisfied that they each consent to the postponement, although I note that the Respondent may not have consented had he been aware that the Claimant would not attend. Rule 30A(2)(a) is engaged.

21. Neither party suggests that a postponement is sought to give the parties the opportunity to resolve their disputes by agreement, or that the application has been necessitated by an act or omission of another party or the Tribunal.

22. I have therefore considered, in accordance with Rule 30A(2)(a)(ii) whether an adjournment/postponement is in accordance with the overriding objective in Rule 1 of the Employment Tribunals Rules of Procedure to deal with cases fairly and justly. I considered those factors set out (a) to (e) of that Rule.

23. The Respondent's application to postpone is made on the same basis, namely that he has to work, as was his application to postpone the hearing on 13th August 2024. I am satisfied that the Respondent was aware of the hearing date in about mid-August 2024. The Respondent has had ample time to make arrangements to be absent from work for a 2-hour period to enable him to attend the hearing. As the hearing was listed to take place by CVP the Respondent was

not required to take a longer absence to attend the Tribunal building. He has failed to make such arrangements on 2 separate occasions and gives no information to suggest why, despite notice of both hearings, he has been unable to arrange to be absent from work which would give the Tribunal confidence that he would attend on any future date. It is also not clear that the Respondent's application was made in a timely fashion, as required by Rule 30A(1) as no information has been given as to when the Respondent became aware that he would not be able to take time off work to attend the hearing and the application was made at the 11th hour late in the working afternoon on the day before the hearing.

24. The Claimant's application to postpone is based on his lack of awareness of the hearing date. I am not satisfied that the Claimant was unaware of the hearing today having regard to:
 - (i) The Tribunal file which suggests that today's hearing date was set at the hearing on 13th August 2024, which the Claimant attended. This would also be in line with standard practice.
 - (ii) The case management order which was sent to the Claimant by e-mail in mid-August 2024.
 - (iii) All correspondence sent to the Claimant by the Tribunal has been sent to the e-mail address provided by the Claimant and from which he corresponds.
25. Further, there is no evidence in the Tribunal files or records that the Claimant has sought to contact the Tribunal in the 3 months since the hearing on 13th August 2024 to find out when his case was listed or chase receipt of the directions given that date.
26. The claimant has not complied with the following Tribunal orders:
 - (i) Directions given on 21st March 2024 to file a statement as to why he did not present the claim in time
 - (ii) Directions given orally on 13th August 2024 to send a statement and attend today's hearing
 - (iii) Directions given in writing in the case management order dated 13th August 2024 to send a statement and attend today's hearing
 - (iv) Directions given today to provide information within 2 hours as to his compliance with the case management orders of 13th August 2024 and why he was unaware of the hearing.
27. No good reason for the Claimant's failure to attend the hearing or comply with the directions has been given, and in his e-mail at 09:58 he accepts that his failure to attend today is his fault.

28. The final hearing has been listed on 2 separate occasions (13th August 2024 and today, 13th December 2024) for a total of 5 hours of Tribunal time and has been ineffective to determine the claims of unpaid wages and holiday pay on both occasions as a result of the Claimant's failure to comply with directions, and additionally on this occasion as a result of his failure to attend today.
29. An adjournment would occasion further delay in a case that has already been significantly delayed as a result of the claim having been brought out of time and the previous adjournment. The Claimant has already received judgment in respect of his redundancy payment, The total potential value of the outstanding claims is in the region of £3,100.
30. The outstanding claims are in any event brought out of time and as a result of the Claimant's repeated default, there is no explanation of the same before the Tribunal which could allow the Tribunal to extend time. The Tribunal notes that the ET1 states that the wages claim of £2,510 relates to unpaid wages prior to May 2023 and it appears that even the first claim (which was rejected) brought by the Claimant was likely to have been brought out of time.
31. The further delay and expense that will be incurred by adjourning the hearing is not proportionate to the complexity and importance of the issues or the value of the Claimant's claims. It is not a proportionate use of the Tribunal's overstretched resources (and would be to the prejudice of other cases) to adjourn/postpone the claim again and allocate further Tribunal hearing time.
32. For the avoidance of doubt, neither application satisfies me that there are any exceptional circumstances that would enable me to adjourn/postpone the hearing pursuant to Rule 30A(c).

Strike out because the claimant has not complied with the Tribunal Rules or a Tribunal order

33. The Tribunal cannot trace any statement sent by the Claimant throughout these proceedings and the Claimant did not attend the final hearing listed today.

34. The claimant has not complied with the following Tribunal orders:
- (v) Directions given on 21st March 2024 to file a statement as to why he did not present the claim in time
 - (vi) Directions given orally on 13th August 2024 to send a statement and attend today's hearing
 - (vii) Directions given in writing in the case management order dated 13th August 2024 to send a statement and to attend today's hearing
 - (viii) Directions given today to provide information within 2 hours as to his compliance with the case management orders of 13th August 2024 and reasons for non-attendance.
35. I have considered the overriding objective at Rule 1 of the Employment Tribunals Rules of Procedure and the matters set out above under the sub-heading "**The postponement requests.**"
36. The Claimant has been given ample opportunity to comply with the Tribunal's directions and to provide the evidence required to determine the claims, and in particular to provide evidence relevant to the issue as to whether time should be extended. He has failed to do so.
37. He has failed to attend the hearing today and valuable Tribunal hearing time has been lost.
38. He has not provided any explanation for his failure to comply with directions regarding a statement and I have rejected his assertion that he did not know of the hearing today for the reasons set out above.
39. For the reasons set out above I am satisfied that it is proportionate and in accordance with the overriding objective to strike out the claims.
40. Had I not done so, I would have dismissed the claims under Rule 47 of the Employment Tribunal Rules as the Claimant did not attend, I refused to adjourn or postpone the claim for the reasons given above and there was no evidence before the Tribunal on which the Tribunal could determine the claims. In particular, there was no evidence before the Tribunal to allow the Tribunal to conclude that it was not practicable for the Claimant to present his claim in time.

Case Number: 2300005/2024

Employment Judge L Clarke

13th December 2024