



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr Kevin Szabo**

v

**Respondent**

**Pace Security Services Limited**

## PRELIMINARY HEARING

**Heard at:**

**On: 4 April 2017**

**Before: Employment Judge Bedeau**

**Appearances:**

**For the Claimant:**

**Did not attend**

**For the Respondents:**

**Mr M Bloom, Solicitor**

## JUDGMENT

Having regard to Rule 47 Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, proceedings against the respondent are dismissed.

## REASONS

1. By a claim form presented to the tribunal on 9 January 2017, the claimant made claims of:
  - 1.1 Automatic unfair dismissal for allegedly having been dismissed for a TUPE reason;
  - 1.2 Race discrimination because he is Eastern European;
  - 1.3 Unauthorised deductions from wages;
  - 1.4 Alleged violation of the employment laws;
  - 1.5 Breach of contract; and

1.6 Unauthorised deduction from wages?

- 2 To these claims the respondent has denied liability and asserts that the claimant was required to undergo a vetting procedure in accordance with the appropriate British Standard. He failed to give his consent and was dismissed on the day his employment was transferred to the respondent, namely on 24 October 2016. Vetting applied to the respondent's employees having regard to the British Standard requirements. Accordingly, the claimant had not been discriminated against because of his race and had been paid his contractual notice in lieu. The other claims being denied. The respondent further contended that some of the claims are outside the tribunal's jurisdiction and should be struck out. It applied for the case to be listed for a preliminary hearing in public for a judge to hear and determine the out of time issue and whether the remaining claims should be struck out as having no reasonable prospect of success or a deposit ordered as they have little reasonable prospect of success.
- 3 Notice was sent to the parties on 21 February 2017 listing the case for a preliminary hearing for today.
- 4 On 3 April 2017 at 08:27, the claimant wrote to the tribunal in the following terms:

“The tribunal will hold a case management discussion tomorrow on 4 April 2017.

I would like to request to postpone the case management discussion preliminary hearing as I am unable to attend at the tribunal.

I had a little accident and twisted my back therefore I have a horrible back pain and my movement is more than limited. This is prevent me to attend on the hearing. I must remain at home and treat it for a few days or weeks.

Thank you in advance.”
5. At 09:59 on the same day, the respondent's legal representatives emailed the tribunal stating:

“Dear Sirs,

We have received an email below from the claimant requesting a postponement of tomorrow's Preliminary Hearing. The application is opposed on behalf of the respondent. There is no medical evidence in support of the application and we believe the claimant is simply attempting to avoid the matter. Please note therefore our objection to any application to postpone the preliminary hearing.”
6. In a letter sent by email dated the same day, Employment Judge Manley refused the claimant's application and directed that he must obtain medical evidence of his back injury and its effects. He was specifically informed that the case remained as listed for hearing today on 4 April 2017.
7. The claimant sent a further email on 3 April at 10:53 simply copying an email he had sent to the respondent, marked for the tribunal's urgent attention, in which he wrote:

“Dear Sir/madam,

The respondent opposition is scandalous and vexatious entirely. I have informed the tribunal at the earliest time as I could in respect of my non-ability to attend due to an illness.

I am not required to attend any medical centre with back pain and what is more any pharmacy can give me medicine for back pain. They offered paracetamol, Ibuprofen and I can use the cream (Voltarol) that I have. On top of all this in any employment the employee is not obligated to obtain or/and provide sick note for the first seven days.

Not to postpone the hearing would seriously breach the principal of natural justice and my article 6 rights for a fair trial/proceeding.”

8. The tribunal informed the parties on 3 April that the case would remain as listed unless the claimant,

“sets out clearly why he cannot attend, explaining what symptoms he has.”

9. At 05:36 this morning, 4 April, the claimant emailed the tribunal stating the following:

“I’m writing this email in respect of the refusal of my postponement request.

I am going to take the decision to the EAT as the ET/judge has violated by Article 6 right seriously. I will not further destroy my health!

The decision is giving rise to a reasonable suspicion of corruption and bias!”

10. I have been invited by Mr Bloom, solicitor on behalf of the respondent, to read from the joint bundle, two email correspondence from the claimant both dated 23 February 2017, to him. The first in time was at 10:26 and it reads as follows:

“Dear Martin,

Thanks for the bundle. Ha ha ha. Is it a joke right? I am not a simple East European piece of shit but hard bite? I will see you on the hearing and hope you will enjoy it.”

11. In the later email, sent at 15:18 he wrote:

“Thank you for reading my email. I hope you already cried to your client but please do not drink in advance for your win. I look forward to meeting with you.”

12. Apart from the claimant’s emails, there is no medical evidence in support of his claim that he had suffered an accident sustaining an injury to his back rendering him unable to attend the hearing today and did not visit or call his doctor for a report on his condition.

13. The tribunal waited 10 minutes before starting the case but the claimant did not attend.

14. Mr Bloom invited me to strike out the claims on the basis of either no jurisdiction or no reasonable prospect of success. He submitted that the claimant was just playing the system and did not intend to attend the hearing but knew that the

respondent would be attending and would incur costs. To adjourn would further add to the respondent's costs without any possibility of those costs being met by the claimant who is in impecunious.

**The Law**

- 15. Rule 47, schedule 1, Employment Tribunals' (Constitution and Rules of Procedure) Regulations 2013, as amended states:

“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. In the case of Cooke v Glenrose Fish Company [2004] ICR 1188, the Employment Appeal Tribunal held that the tribunal may consider contacting the party who is absent.

**Conclusions**

- 17. I have considered the pleadings and correspondence in this case and I have also taken in to account the submissions of Mr Bloom. I have come to the conclusion that the claimant is unwilling to attend the hearing. The day prior to the hearing he sent to the tribunal an email saying that he had twisted his back and was unable to attend. He made no attempt to seek medical evidence covering his alleged injury preventing him from attending the hearing. When his application was refused on terms that further information be provided, he responded by threatening the tribunal with an appeal to the Employment Appeal Tribunal.
- 18. The respondent has incurred costs in attending today and in preparing a joint bundle of documents, in the sum of £1,000. There is no certainty that the claimant would attend should the hearing be adjourned. Further, costs awarded in favour of the respondent are unlikely to be met as the claimant is not in employment.
- 19. Having considered Rule 47, I have come to the conclusion that proceedings against the respondent should be dismissed as I am satisfied that the claimant was unwilling to attend the hearing and had deliberately absented himself. The onus is upon him to prosecute his case and to challenge the respondent's application which he has failed to do.

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**Employment Judge Bedeau**

Sent to the parties on:

27/04/2017

For the Tribunal:

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