



EMPLOYMENT TRIBUNALS

Claimant: Mr G Anukwe

Respondent: IELTS Limited

Heard at: London East

On: 6 August 2019

Before: Employment Judge John Crosfill

Representation

Claimant: No Appearance or representation

Respondent: Ms N Nze

JUDGMENT

1. The Claimant's claims of unlawful deduction from wages contrary to Sections 13 and 23 of the Employment Rights Act 1996 and or his claim for wages brought under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 are struck out pursuant to rule 37(1) (c), (d) and (e) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The hearing listed for 28 August 2019 is cancelled.

REASONS

1. The Claimant's claim was for wages he said were owed by the Respondent in respect of teaching work undertaken by him. At the outset of proceedings there is no doubt that some wages were outstanding. The Respondent says

that any delay in payment wages was caused by the failure of the Claimant to complete timesheets. It is not disputed that the Respondent made a payment to the Claimant after the proceedings had begun. The issue that remained appeared to be how much was said to be owing.

2. The matter was first listed for a final hearing on 18 February 2019. The hearing commenced before employment Judge Hyde who after hearing some submissions or evidence and having regard to some documents postponed the hearing having taken the view that there had been inadequate disclosure by both parties. She made an order that the Claimant provide evidence of the work he says he had carried out. The Claimant purported to comply with that order on 15 April 2019.
3. The matter was relisted for a full hearing on 13 May 2019. The Respondent did not attend that hearing. Employment Judge Burgher commented that “it was clear that there were not copies of relevant statements and documents available to consider the case”. He decided to adjourn the hearing making further directions that the claimant provides “a “schedule of claim” including a breakdown of the sums concerned showing how they are calculated by 10 June 2019”. He also indicated that he was considering making a preparation time order in favour of the Claimant.
4. On 17 June 2019 the Respondent wrote to the tribunal complaining that the Claimant had failed to comply with the order that the Claimant set out what he is claiming and seeking an order striking out the Claimant’s claim. Employment Judge Burgher considered that application on the papers and listed the matter for a one-hour preliminary hearing which was listed before me on 6 August 2019.
5. At 10am on 6 August 2019 the Respondent had attended through its director Ms Nze who had prepared a bundle of documents for the use of the tribunal. The Claimant had not attended. I decided to give the Claimant 20 minutes to see whether he simply had transport difficulties and asked the Clerk to telephone him on the mobile telephone number he had given to the Tribunal. After 25 minutes he had not arrived. The Clerk had telephoned his mobile phone but got no response and had left a message. On that basis I decided to proceed with the hearing.
6. Ms Nze told me:
 - a. that she had not been provided with a schedule of claim on 10 June 2019 as ordered by Employment Judge Burgher; and
 - b. that she had had no contact from the claim whatsoever since 15 May 2019; and
 - c. that the Respondent had made three payments to the Claimant totalling £3232 gross in respect of his work; and

- d. that the courses taught by the Claimant totalled 144 hours work (assuming that all of the students had attended and the courses went ahead). She said that a 'session' was one hour long.
7. Having regard to the Claimants pleaded case it seemed that the dispute between him and the Respondent was limited to the question of whether a session was one hour or one and a quarter hours duration. It was common ground that each of the 3 courses said to be taught by the Claimant was at most 48 'sessions'.
8. If the Claimant is right then his claim is now worth the difference between the sum paid by the Respondent £3232 and £3600 being the sum that would be due if the Claimant was correct that a session was 1.25 hours and that he was entitled to be paid £20 per hour. Whilst the Claimant has alluded to some consequential loss he had not specified what that loss might be. Therefore, assuming all disputed matters in favour of the Claimant, the sum in dispute appeared to be £368.00 unless any consequential losses were claimed.
9. On the evidence before me it appeared the Claimant was in breach of the order of Employment Judge Burgher in that he had failed to provide a schedule of what he claimed. Furthermore, he had been ordered to provide Respondent with a bundle of documents by 8 July 2019 and had not done that.
10. I have set out above that the Claimant is in breach of two orders of the Tribunal. I find that the Claimant by his failure to comply with the orders of the Employment Tribunal coupled with his failure to attend the hearing leads me to find that he has not actively pursued his claim. Given that the Claimant has had plenty of opportunities to clarify his claim and, given that he is studying at degree level and was a teacher, I find that failure to do so is intentional.
11. I went on to consider whether despite these matters a fair trial remained possible. I consider that issue of proportionality is intertwined with the question of fairness. To be fair a matter needs to be dealt with in a proportionate way. The matter has so far been listed on three occasions. Whilst the Claimant is not to blame for the Respondent's failure to attend the hearing of 15 May 2019 it is plain that he had not prepared for that hearing by properly setting out his case. That is the reason why further orders needed to be made. The cost to the parties in time and effort and to the tribunal system of this claim is utterly disproportionate to the amount of money apparently at stake (assuming the claim is only as set out above). I considered that if the Claimant is after many months still unable to provide a clear statement of what else he is asking for, provide a bundle of documents and attend hearings then it appropriate to strike out the Claimant's claims.

Employment Judge Crosfill

6 August 2019