



EMPLOYMENT TRIBUNALS

Claimant: Mr M Kler

Respondent: Quill Software

HELD AT: Manchester **ON:** 3 December 2019 and In
Chambers on 7 January 2020

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: Not in attendance or represented
Respondent: Mr Dunn, Counsel

FURTHER JUDGMENT

The judgment of the Tribunal is that the claimant has failed to comply with the terms of the Unless Order made on 3 December 2019, sent to the parties on 5 December 2019, and the claimant's claims are dismissed pursuant to rule 47 of the 2013 Rules of Procedure.

REASONS

1. An Unless order was made at the hearing which the claimant failed to attend on 3 December 2019. Compliance was required by 17 December 2019. It was in very specific terms, in that he was required to:
 - a) confirm in writing to the Tribunal, copied to the respondent, the reasons why he failed to attend or be represented at, or otherwise to communicate with the respondent or the Tribunal in relation to, the preliminary hearing of his claims listed for 3 December 2019 at 10.00 a.m., and, in particular address his apparent failure to communicate with the respondent's representative in relation to the preliminary hearing, and why receipt of an email sent from the respondent's solicitors at 17.53 on 29 November 2019 did not alert him to the impending hearing on 3 December 2019; and

- b) provide to the Tribunal, also copied to the respondent, documentary evidence in support of his reasons (e.g. proof that he was working in Crewe on the day of the hearing),

2. The Tribunal did not receive anything from the claimant on or before 17 December 2019. The claimant sent the Tribunal an email on 18 December 2019, in which he claimed that he had previously emailed the Tribunal, but had been experiencing difficulties accessing his email account, which he could only access using an old laptop. He followed this up with an email of 20 December 2019, which contained confirmation from Linda Grimshaw that he had been at work on the day of the hearing, and had asked for time off during that day, but as he had used up all his holiday, this would have to be unpaid. He later sent an email on 20 December 2019, in which he enclosed an email which he claims he sent to the Tribunal on 4 December 2019, in which he sought to explain why he missed the hearing on 3 December 2019. He seeks to continue the claims, and says he wishes to go to trial, as he has a good case. He states that he has had a stressful time in his current job, travelling long hours, with personal issues, so that he “lost track” of the hearing date.

3. The respondent has commented upon the claimant’s emails, and seeks that the claims be struck out. The sole issue to be considered is whether the claimant has complied with the terms of the Tribunal’s Unless Order, which operates automatically to dismiss the claims upon non – compliance.

4. The Employment Judge’s conclusion is that the claimant has not complied with the Unless Order in a number of respects:

- a) The email of 4 December 2019, regardless of when it was received, is not compliance, and cannot be, as it predates the sending of the Unless Order to the claimant;
- b) In any event it does not address all the points that the claimant was required to address in para (a) of the Order.
- c) Whilst the claimant has, albeit after 17 December 2019, provided evidence that he was working on 3 December 2019, and was not able to obtain leave, he has merely established that he was not permitted to take paid leave , he has not shown that he could not actually leave work and attend the hearing later in the day.
- d) More importantly, he has wholly failed to address two specific issues as required by para (a) of the Order, firstly, his lack of communication with the respondent’s representative, and secondly, why receipt of an email from the respondent’s representative on 29 November 2019 did not alert him to the fact that there was a preliminary hearing on the following Tuesday.

5. The Employment Judge is accordingly satisfied the Unless Order has not been complied with, and the claims are accordingly dismissed.

6. If the claimant wishes to pursue the claims any further, he must make an application for relief from sanction as soon as possible, and prepare, in support of it, a witness statement addressing his non – compliance , particularly in relation to the communication from the respondent’s representative.

Employment Judge Holmes

Date: 7 January 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 January 2020

FOR THE TRIBUNAL OFFICE