



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mohammed Jhangir

Dream Mode Limited

By Videolink

On:

29 July 2021

Before: Employment Judge JM Wade

Appearance:

For the Claimant: No attendance

For the Respondent: Mr Lunat (solicitor)

Interpreter: Ms Mir (not sworn)

JUDGMENT

- 1 The respondent's application dated 23 July 2021 to strike out the claim for having no reasonable prospects of success is refused.
- 2 The claimant's postponement request is refused.
- 3 The claim of unlawful deduction from wages is dismissed upon the claimant's failure to attend or be represented at today's hearing, pursuant to Rule 47.

REASONS

1 Today's circumstances are set out below.

2 The claimant's was employed for eight or nine months from 16 September 2019 until May or June of 2020 (the precise date may have been determined today). His ACAS certificate records conciliation from 13 August 2020 to 28 August 2020. He initially presented an unfair dismissal complaint on 17 December 2020, with particulars alleging that wages were not paid, suggesting that employees were required to work longer hours than those for which they were paid.

3 At a hearing in April 2021, at which the claimant was represented by his cousin, Mr Hussain, an Employment Judge dismissed the unfair dismissal complaint and made orders for an orderly hearing of the deduction from wages complaint, due to have been heard today. Those orders recognised that the claimant would require an interpreter today, English is not his first language.

4 The claimant's wages case, as clarified in a short email, said this: "*the factory claimed three furlough payments on my behalf which I did not receive and totalling £2338.28 1 weeks wage which is £436 and £30 tax refund and £1 046. 40 which is my holiday pay I am willing to give this information on oath as well.*"

5 In accordance with the orders for this hearing, Mr Lunat first sent electronic

copies of pay slips and other documents to the claimant's cousin, and last week in response to a request from the claimant's cousin, he posted a complete hardcopy of the hearing file.

6 It is apparent from that file that the essential issue between the parties is whether, when the pay slips record payment in cash, payment was in fact tendered. That is not a matter which is fair to determine without hearing sworn evidence, because it is likely to be determined by the Employment Judge's assessment of the reliability of the oral evidence being given.

7 On Friday 23 July at 12.02 pm the respondent solicitor applied on behalf of the respondent for either a strikeout of the claimant's claim, or an unless order, because no witness statements had been served by the claimant in accordance with the orders, and it was considered on the basis of the pay slips provided that the claim had no prospect of success.

8 The prompt response from the claimant's cousin to the application was as follows: "I am busy told you to post out papers to him". The respondent's application and the claimant's response was provided to me this morning – it has not been previously determined.

9 That application does not succeed. The claimant's case and its prospects of success cannot be assessed without hearing oral evidence. Where payment by cash is asserted, without there being any evidence of receipts, it cannot be said that a case has no reasonable prospects of success. For a litigant in person in a second language a fair hearing could have taken place today, with the assistance of an interpreter, with the claimant simply confirming the contents of the email clarifying his claim.

10 At 14.13 p.m. on 28 July, yesterday, the claimant's cousin provided a copy of an isolation note requiring the claimant to self isolate from 25 July 2021 to 4 August 2021 as a result of living with someone who has symptoms of coronavirus. Mr Hussain says this: "hi Janghir is self isolating until 4 August can't meet him or see him so for this reason can we adjourn please".

11 That application to postpone this morning's hearing was not copied to Mr Lunat. I directed his comments be sought by our clerk this morning and indicated that I would join the hearing and address both applications. Our clerk attempted to contact claimant to instruct attendance on the hearing by CVP for that purpose. Those attempts were by telephone to the claimant, and by email to Mr Hussain, there being no record on the tribunal's file of a telephone number for Mr Hussain. Those attempts did not yield any contact.

12 At the start of this hearing I indicated to our interpreter that I would swear her in if the claimant joined the hearing, having heard the message to do so from our clerk. In the event, that did not arise. Neither Mr Hussain nor the claimant attended.

13 I consider that failure to attend is unreasonable in circumstances where the postponement request had not been granted; self isolation of itself does not present any greater difficulty in joining a CVP hearing generally speaking; the reason given for non-attendance was difficulty in liaison between the claimant and his cousin, representing him. The claimant would be in no worse position than Mr Lunat and its client in different places, needing to liaise by telephone or electronic message. If further preparation in relation to the documents was required, that could have taken place, given the very straight forward, single issue to be determined, by giving the claimant and his cousin time before the claimant was sworn in. Furthermore, the application has been made at the last possible moment, when the reason, household symptoms, have been present for several days, given the period of isolation referred to above. That puts the respondent to the maximum inconvenience and cost.

14 For these reasons I refuse the postponement request.

15 Rule 47 provides that, where “a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of the party.”

16 It is not in the interests of justice to proceed with the hearing today and decide it on its merits. The allegation of a failure to make cash payments is serious. It is not in the interests of justice to decide that without evidence, even though the claimant and his cousin have had a reasonable opportunity to attend today. Equally it is not fair for the respondent to have a dispute which should have been determined in April of this year, relating to matters last March to June, to be outstanding and putting it to cost. Similarly the public purse, where interpretation is required. In all these circumstances I consider dismissal pursuant to rule 47 to be the just course.

17 Having announced these reasons today, I now see that the claimant’s claim also has great difficulties for time limit reasons. He did not present his claim within the month long ACAS extension period. He is therefore reliant upon the “stop the clock” provisions, which do not assist in bridging the gap until 17 December 2020. I would therefore have had to consider with him why it was not reasonably practicable for him to present a claim about alleged failure to pay wages from March to June 2020, by no later than October 2020. It is unclear to me why this time limit issue has not been raised previously, but having identified it, it is another compelling reason why dismissal of the claim today is in the interests of justice.

18 Mr Lunat indicated a costs application. I indicated that it would need to be put in writing but he may wish to consider the proportionality of that, given the reasons I have expressed above. That is all the more so when a time limit issue which could have been raised, has not been.

Dated: 29 July 2021

Employment Judge JM Wade