



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr J Rotchford-Lloyd**

**v Ms M Bratton (R1) Evanlils Ltd (R2)**

## PRELIMINARY HEARING

**Heard at: Leeds by CVP**

**On: 8 November 2022**

**Before: Employment Judge O'Neill**

**Sitting with Ms G Fleming**

**Mr P Langman**

**Appearance:**

**For the Claimant: No appearance**

**For the Respondent: No appearance**

## JUDGMENT

Each claim is dismissed, the Claimant having failed to appear. The claimant made claims for unfair dismissal; wages act arrears of pay; notice pay; holiday pay; sexual orientation discrimination and/ or harassment.

## REASONS

### **Background from the CMO Case Summary**

1. The claimant was employed by one of the respondents, either Mary Bretton (first respondent) or Evanlils Limited, a company that operated a hairdressing business, from 28 January 2019 until 11 December 2021 (claimant's case) or 14 December 2021 (respondents' case).

The claimant was employed as Principal Stylist at a salon that traded as Lifestyle Lounge situated at 2 Montpellier Street Harrogate from 28 January 2019. At the date of this hearing, it was not resolved what legal

entity operated the business and was, therefore, the claimant's employer. The two options as employer are the two respondents.

On 11 December 2021, members of the salon staff went out for their Christmas celebration. It is alleged that the first respondent directed homophobic abuse at the claimant and dismissed him on the spot whilst on the night out. At the CMO Ms Bratton said that she told the claimant not to come to work on 14 December 2021. She denies using homophobic abuse towards the claimant.

Ms Bratton says that the claimant effectively resigned by failing to attend work.

The claimant claims notice pay, unpaid wages for 10 shifts of 8 hours each and 18 days' holiday pay. Ms Bratton accepts that the claimant is owed an amount of holiday pay and wages.

### **Claims**

2. The claimant made claims for unfair dismissal; wages act arrears of pay; notice pay; holiday pay; sexual orientation discrimination and/ or harassment.

### **Evidence**

3. There were no witnesses or witness statements. The parties did not appear.
4. The tribunal had before it the following documents ET1; ET3; CMO; respondent letter 7<sup>th</sup> of November 2022; tribunal reply 7<sup>th</sup> November 2022.

### **Law**

5. Rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regs 2013

*'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.'*

### **Findings**

6. The claim was lodged on the 2<sup>nd</sup> of February 2022 on the standard form ET1 against the first respondent.
7. An ET3 was lodged by the first respondent naming the second respondent as the employer. That was a company called Evanlil's limited of which the first respondent was the sole director. The registered office was at the same

address at 2 Montpellier St Harrogate as the salon. The second respondent was added at the CMO hearing on the 13<sup>th</sup> April 2022.

8. In the ET3 form before us box 6 is empty and although it says the respondent intends to lodge a defence it would seem that no defence has been entered. That also appeared to be the position when judge sure dealt with the matter at the CMO.

At paragraph 12 of the CMO it reads ' my copy of Mrs Bratton's ET3 did not have a completed section 6.1. She kindly sent me a completed copy and I have asked the tribunal office to send a copy of this to Mr Rockford Lloyd.'

Although the completed ET3 defence appears to have been admitted at the CMO we did not have the completed copy of the ET3 before us and none could be located.

9. The claimant did not attend the CMO hearing because he was working, but he was aware of it.
10. Although the first respondent agreed that holiday pay and arrears of pay were owed to the claimant in some measure no specific amount was agreed at the CMO. The claimant was ordered to provide particulars of the money claims and how they were calculated. The claimant has failed to do this.
11. The claimant was also asked to clarify who he alleged his employer to be and whether it was R1 or R2 and the Judge suggested he produced key documents such as his contract of employment wage slips tax documents to assist in the determination of the employer. The claimant has not clarified his position nor has he supplied such documents.
12. The claimant was also ordered to provide particulars of the offending remarks allegedly made by the first respondent on the 11<sup>th</sup> of December 2021, the claimant has failed to do so.
13. The claimant was ordered to provide a scheduled loss but has failed to do so.
14. Each party was ordered to provide and exchange witness statements but this has not been done.
15. Each party was ordered to produce and agree documents and the respondent to provide a trial bundle but this has not been done.
16. The first respondent has failed to provide a witness statement or any documents herself and by letter dated the 7<sup>th</sup> of November 2022 has indicated that she does not attend to appear at the hearing on the 8<sup>th</sup> of November because of her work commitments. In that letter she says that the claimant has failed to provide the information he was ordered to send her. The tribunal replied on the 7<sup>th</sup> of November 2022 to refuse an adjournment.
17. The claimant has not contacted the tribunal to notify us that he did not intend to appear nor to ask for an adjournment.

18. The hearing began at 10:00 AM. By 11:00 AM no party had appeared, the Clark had telephoned each party to leave messages but neither had contacted the tribunal.

19. The tribunal decided to deal with the matter in the absence of the parties.

Conclusions

20. The claimant has failed to appear at this hearing. The tribunal is satisfied that the claimant was given proper notice of this hearing and all reasonable efforts have been made to contact him today. This is not the first occasion on which the claimant has failed to attend a hearing.

21. The claimant has failed to comply with the orders made on the 13<sup>th</sup> of April 2022 to provide further information. The tribunal has considered the information before us but we are unable to reach a conclusion from the material before us, on the balance of probability, as to who employed the claimant, the amount of any specific money claim due, whether dismissal occurred at all and whether the claimant was discriminated against or harassed because of sexual orientation.

22. In all the circumstances we dismiss the claim, the claimant having failed to appear.

8 November 2022

**Employment Judge O'Neill**