



EMPLOYMENT TRIBUNALS

Claimant: Mr Gabor Kocsis
Respondent: Dalston Hospitality
Heard at: East London Hearing Centre
On: 30 August 2022
Before: Employment Judge Sugarman

Representation
Claimant: Did not attend
Respondent: Did not attend

JUDGMENT

The judgment of the Employment Tribunal is that the Claimant having failed to attend or to be represented at the full merits hearing listed to commence on 30 August 2022, his claims are dismissed under Rule 47, Schedule 1 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013.

REASONS

Background and Facts

1. By a Claim Form presented on 12 March 2022, the Claimant brought a claim to recover holiday pay which he claimed was owing to him when his employment terminated on 16 August 2021. He sought £350. No further particulars were provided. It was treated by the Tribunal as a claim under the Working Time Regulations 1998.
2. ACAS was not notified under the Early Conciliation procedure until 28 January 2022, over 5 months following termination. The ACAS Early Conciliation

certificate was issued on 10 March 2022. The claim is therefore out of time. ACAS ought to have been notified no later than 15 November 2021 and the Claim Form lodged no later than a month after any certificate was issued.

3. The Claim Form was acknowledged by the Tribunal on 22 March 2022. The Respondent had until 19 April 2022 to respond. No Response was entered.
4. On 4 April 2022, the Tribunal sent out a Notice of Hearing containing Orders requiring the Claimant, amongst other things, to set out and send to the respondent within 4 weeks a document setting out how much he was claiming and how it had been calculated, together with copies of all supporting documents and evidence. The Claimant was then required to send in all documents and evidence to the hearing.
5. Nothing at all has been received by the Tribunal from the Claimant (nor the Respondent) after 4 April. My clerk checked the Tribunal's emails this morning and confirmed, following a search, nothing had been received.
6. I logged into the hearing today at 12pm. There was another hearing already on the line being conducted by Employment Judge Yale. Neither the Claimant nor the Respondent had logged in.
7. I asked Employment Judge Yale to let me know when his hearing had finished and to let me know if either of the parties in this case had tried to log in. In the interim, I obtained new telephone login details and asked my clerk to contact the parties with them.
8. Employment Judge Yale contacted me at 12:23 to let me know his hearing had finished and no other parties had tried to dial in, to his knowledge.
9. Having heard nothing from the Claimant (nor the Respondent), my clerk telephoned the Claimant but was unable to reach him and so emailed the Claimant at 12:26 reminding him of the hearing listed at 12:00 and providing new dial-in details.
10. I dialled into the telephone hearing at 12:28 using the original dial-in details. No-one was on the line.
11. I dialled into the telephone hearing at 12:30 using the new dial-in details. No-one was on the line.
12. I waited until 12:55. There was no attendance by either party.

Conclusions

13. Rule 47 provides:

‘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.’
14. I had regard to the Court of Appeal case of **Roberts v Skelmersdale College** [2004] IRLR 69. Although it was decided under the old rules, there is sufficient

similarity between the two rules that it remains good law. The following propositions can be taken from the judgment:

- 14.1. the rule confers a very wide discretion;
 - 14.2. the rule does not impose on an employment tribunal a duty of its own motion to investigate the case before it, nor to satisfy itself that on the merits the Respondent has established a good defence to the claim of the absent employee;
 - 14.3. before making a decision, the Tribunal shall have regard to the information required under the rule.
15. The Claimant provided no evidence for me to consider and there is no evidence that he complied with the Tribunal's Order of 4 April.
 16. Having been provided with notice of the hearing today, he has failed to attend or explain his absence. There is no application for an adjournment.
 17. I had in mind the guidance in **Roberts** that there is no obligation on the Tribunal to conduct its own investigation into a case where a party fails to attend. However, I also had regard to the information available to me from the Claim Form.
 18. The Claim Form has been presented out of time. It is therefore for the Claimant to establish, under Regulation 30(2) of the Working Time Regulations 1998 that it was not reasonably practicable for the Claim Form to have been presented within 3 months and that it was presented within such further period as was reasonable. The Claimant has advanced no reason for the late presentation of the Claim Form.
 19. The claim for holiday pay was unparticularised in the Claim Form, aside from an assertion the Claimant was seeking £350. No details relating to his net or gross pay were provided. There is no evidence in the Claim Form or before me relating to the number of days holiday said to have been taken, if any, nor what was said to be outstanding on termination. I do not know how the sum claimed has been calculated.
 20. I concluded it was not possible to fairly proceed with a hearing in the absence of either party or to uphold the claim on the basis of the Claim Form.
 21. In short, the claim appears to be out of time and no evidence or argument has been advanced for why the Tribunal would have jurisdiction to hear it. Further, evidence is required to prove the claim, the burden being on the Claimant to do so and he has provided none.
 22. The Claimant has failed to progress his claim or comply with the Tribunal's Order.
 23. I have taken into account that dismissal of a case under rule 47 is a severe sanction. I considered whether it would be right, as an alternative, to adjourn the hearing to another occasion. I decided that it, in the circumstances, it would not be right to do so. There was no such application but even if the Tribunal had done so of its own volition, if the case were relisted, there is no basis on which I could conclude the position would likely be any different.

24. In all the circumstances, I have taken the decision to dismiss the claim in accordance with Rule 47 because the Claimant has neither attended nor been represented at this hearing.

**Employment Judge Sugarman
Date: 30 August 2022**