



EMPLOYMENT TRIBUNALS

Claimant: Mr Shaukat Ali

Respondents: 1. Quad Professional Service Limited
2. Mr John Akinyode

Heard at: East London Hearing Centre

On: 4 August 2022

Before: Employment Judge Sugarman

Representation
Claimant: Did not attend
Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that: -

1. The Claimant having failed to attend or to be represented at the full merits hearing listed to commence on 4 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 1 April 2022, the Claimant brought a claim for unlawful deductions from wages. He named Mr John Akinyode as the Respondent. However, the information provided in the Claim Form made clear he was working for "QPSL". The ACAS Early Conciliation Certificate identified the Respondent as Quad professional service limited.
2. The Claim Form gave incomplete and conflicting information about the period of employment nor was it clear what sum the Claimant claims he was due. It read "I am looking for around £2,500 minimum".

3. A Notice of Hearing was sent to the Claimant and both Respondents on 11 May 2022 listing the case for a final hearing by telephone at 12:00 on 4 August 2022.
4. The same Notice contained Orders requiring the Claimant to send a document to the Respondent setting out how much he was claiming and how it was calculated, together with copies of all supporting documents and evidence. The Respondent then had to send to the Claimant its documents and evidence. The parties then had to send a copy of their documents and evidence to the Tribunal.
5. A Response with some exhibits was received on 11 May on behalf of Quad Professional Services by Mr Akenyode. The claim was denied. The period of employment was disputed. The Respondent averred the Claimant did not work for the period he was trying to claim for and that he had not attended work as was required by the terms of the scheme he was on. It contended that his employment finished in December (date not provided) and that further engagements thereafter were on a voluntary basis.
6. Thereafter, it appears the Claimant did not comply with the Tribunal's Orders. There is no evidence from him on file.
7. The parties were asked on 18 June whether they were ready for the hearing today and had complied with the Orders.
8. Mr Akinyode confirmed on 18 June the Respondents were ready to proceed with the hearing.
9. On 25 July, the Respondent filed a short witness statement from Yasmin Ishaq.
10. I dialled into the hearing at 12:00 today. There was no attendance from either party.
11. I asked the clerk to make some enquiries with the parties to see if there were any difficulties. I waited on the line until 12:40. The clerk informed me that she had phoned the Claimant 3 times but each time it went straight to voicemail, as if the phone was switched off.
12. I also asked that the Tribunal system be checked for any further correspondence from the Claimant. There was none.
13. The clerk did get through to the Respondent and was told that Mr Akinyode had to attend the hospital urgently this morning and there was no-one else able to deal with the claim. He had apparently phoned the Respondent to explain this but no-one had the courtesy of informing the Tribunal.

Conclusions

14. 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.’

15. 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:
 - 15.1. the rule confers a very wide discretion;
 - 15.2. 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;
 - 15.3. before making a decision the Tribunal shall have regard to the information required under the rule.
16. The Claimant provided no evidence for me to consider and there is no evidence that he complied with the Tribunal's Order or responded to the request to confirm that the matter was a ready for a hearing.
17. 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.
18. 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 and Response together with the appendices provided by the Respondent.
19. 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 unproven and untested contentions in the Claim Form. The information in the Claim Form is incomplete, unclear and at times inconsistent, for example in relation to why the Claimant is claiming 18 days pay in January when he avers he was dismissed in December and not "rehired" until February.
20. In short, evidence was required to prove the claim, the burden being on the Claimant to do so, and the Claimant has failed to provide such evidence or indeed to progress his claim.
21. 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.
22. Given the current caseload being dealt with by the Tribunal, it would be many months before it could come on for hearing. The delay would be inherently undesirable and also impact other litigants waiting for their cases to be heard.

23. 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
Dated: 8 August 2022**