



EMPLOYMENT TRIBUNALS

Claimant: Ms. Lisa Hadland

Respondent: Mr. David Hayles

Heard at: Southampton Employment Tribunal (Via CVP)
On: 9th January 2023

Before: Employment Judge Lang

Representation

Claimant: Did not attend.
Respondent: Did not attend.

JUDGMENT

1. No party having attended the hearing the Claim is dismissed.

REASONS

Introduction and procedural history

1. The Claimant is Lisa Hadland. The Respondent is David Hayles. The Claimant brings a claim by way of an ET1 which was received by the Tribunal on 29th September 2022. The Claim as outlined within the ET1 is for arrears of pay for one day which is claimed in the sum of £80.00.
2. On the 11th October 2022 the Claimant was requested, following a review of the ET1 by Legal Officer King, to confirm the correct name and address of the Respondent. On the 17th October 2022 no response had been received and the Claimant was informed she must provide the details by 24th October 2022. On both the 17th and 18th October 2022 respectively, the Claimant confirmed the two addresses which she had for the Respondent, whose name she stated was David Hayles. The Claim was subsequently accepted on 9th November 2022 and the claim was served on the Respondent at both addresses provided. The notice of hearing and directions were sent to both parties (the Respondent at both addresses provided), the date of that notice and order was 8th November 2022. The following

directions are of note:

- a. The Respondent was required to respond to the claim by 7th December 2022.
 - b. One month prior to the hearing the parties were to provide their contact details for the hearing to the Tribunal.
 - c. No less than 14 days prior to the hearing the parties were to agree the relevant documents and compile the same in a bundle. That bundle was limited to 50 pages.
 - d. 7 days prior to the hearing the parties were to exchange witness statements.
 - e. Within 28 days of the order the Claimant was to send a written calculation of the claim.
 - f. Copies of the bundle and statements were to be sent to the tribunal by 4pm two days before the hearing by email.
3. The matter was listed before me for determination on 9th January 2023 at 10am via CVP. No party was in attendance. Following enquires of the Tribunal Office I was informed no documents have been received from either party since the notice of hearing which contained the case management directions was sent on 8th November 2022. Nor had the Tribunal Office received any email explaining to why the parties were not in attendance. No Rule 21 Judgment had been entered and the Response Not Received letter had not been sent.
 4. The Clerk to the Tribunal sought to make enquiries of the parties on the numbers provided on the ET1. I was informed the number provided for the Respondent would not connect simply informing the Clerk that it was unable to take calls. The Claimant initially did not answer, on a third attempt at 10.20 she informed the Clerk that she was working and was unable to attend. She confirmed that she had received the Tribunal paperwork however, had not appreciated the need to attend.
 5. I waited until 10.30 to provide the Respondent an opportunity to attend. He did not. No party has made an application for a Postponement however, I have considered the same given the Claimant has indicated she has not attended due to work.

The Law

6. Pursuant to Rule 47 of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 Schedule 1:

If 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 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.

7. Rule 30A of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 Schedule 1 deals with any application for a postponement:
 - (1) *An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.*
 - (2) *Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—*
 - (a) *all other parties consent to the postponement and—*

(i) *it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or*

(ii) *it is otherwise in accordance with the overriding objective;*

(b) *the application was necessitated by an act or omission of another party or the Tribunal; or*

(c) *there are exceptional circumstances.*

(3) *Where a Tribunal has ordered two or more postponements of a hearing in the same proceedings on the application of the same party and that party makes an application for a further postponement, the Tribunal may only order a postponement on that application where—*

(a) *all other parties consent to the postponement and —*

(i) *it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or*

(ii) *it is otherwise in accordance with the overriding objective;*

(b) *the application was necessitated by an act or omission of another party or the Tribunal; or*

(c) *there are exceptional circumstances.*

(4) *For the purposes of this rule—*

(a) *references to postponement of a hearing include any adjournment which causes the hearing to be held or continued on a later date;*

(b) *“exceptional circumstances” may include ill health relating to an existing long term health condition or disability.]*

8. Rule 29 of Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 Schedule 1 provides:

The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. The particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

9. Rule 41 of Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 Schedule 1 provides:

The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict

that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

10. In making any case management decision I must have regard to the Overriding Objective as set out at Rule 2 of Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 Schedule 1 which provides:

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) *ensuring that the parties are on an equal footing;*
- (b) *dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) *avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) *saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

Law on the Underlying Claim

11. A claim for failure to pay wages owed may be considered as a breach of contract claim or I can consider this claim pursuant to section 13(1) Employment Right Act 1996, which provides the right of a deduction not to be suffered coupled with section 23 of the act which gives the worker the right to present the claim.
12. The time period for bringing such a claim is three months from the date of breach or when payment is owed in accordance with section 23 Employment Rights Act 1996 unless the *employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months.* The section goes on to provide that *the tribunal may consider the complaint if it is presented within such a further period as the tribunal considers reasonable.* The same test applies in respect of considering the claim as a breach of contract pursuant to Article 7 of the Extension of Jurisdiction Order.
13. The burden of proof is upon the Claimant, the standard of proof is the balance of probabilities that is to say it is more likely than not.

Analysis and conclusions

14. Pursuant to Rule 47 I may dismiss the claim or proceed in the absence of that party after considering the information for the party.
15. No party has made an application to postpone, however, for completeness I have considered whether a postponement would be appropriate in accordance with Rule 30A, or under my ability to make case management order of my own initiative in accordance with Rule 29, and regulate the procedure in accordance with Rule 41. Pursuant to Rule 30A there is no agreement for a postponement and nor has one been necessary due to an act or omission of a tribunal or another party. The only avenue therefore would be if there were exceptional circumstances. Under Rule 29 and 41 I must consider the principles as set out in the overriding objective which I shall turn to.
16. The parties were made aware of the hearing by way of the notice of hearing which is dated 8th November 2022. The Claimant has informed the Clerk to the tribunal she has the paperwork. Whilst the Claimant informs the Clerk to the Tribunal that she was unaware of the need to attend the hearing, the notice of hearing is clear when the hearing will take place and that it will take place remotely. It also sets out the actions required of both parties to inform the Tribunal who will be in attendance. No party complied with that direction.
17. No details are provided as to why the Claimant was unable to take time off work or what steps she has taken to enable her to attend. No information is available as to why the Respondent has not attended. As already noted, no application for a postponement has been made by either party.
18. The Claimant has failed to comply with any of the directions set out in the case management order for the provision of documentation nor has she provided a witness statement in support of her claim.
19. Similarly, the Respondent has failed to engage with these proceedings. No ET3 has been lodged and there has been a failure to comply with the directions. No reason for his failure to attend or engage has been given. Whilst one of the claim forms has been returned the form sent to the address of the Respondent as listed on the ET1 and Early consolidation Certificate has not been returned. I am satisfied the Respondent has had notice of the proceedings.
20. In turning to the considerations under the overriding objective. The parties are both litigants in person, there is no evidence or information to suggest they are not on an equal footing. Whilst £80 may be an important sum to the Claimant, the value of the claim is low and both the factual and legal matrix are straightforward. The Claim has been allocated 2 hours this morning which is a proportionate amount of Tribunal resources given the complexity and importance of the issues.
21. Whilst there is a need to avoid formality and to seek flexibility, which would of course include determining the matter on the papers. There is still a need for the claimant to prove her claim, no other flexibility has been requested by either party.

22. If the matter is postponed there would be delay. That would also incur additional expense. Whilst that may not be to the Parties directly there is an additional cost to the public purse through the further allocation of Tribunal Resources.
23. Even if I were to deem the Claimant's reason for non attendance as an application to postpone pursuant to Rule 30A I do not consider the circumstances which I have outlined above as being "exceptional circumstances" a party having work commitments is routine, however, steps are usually taken to enable them to attend.
24. Having taken account all the circumstances, I conclude that the Claim should be dismissed given that:
- a. The hearing has been known about since 8th November 2022.
 - b. The Claimant has failed to comply with the directions (as has the Respondent).
 - c. Tribunal resources have already been allocated which would have enabled the Claimant to have out her case and had it considered.
 - d. The sums involved are low and issues are straightforward. It would be disproportionate to allocate further resources when the Claimant has failed to comply with any of the steps required of her.
 - e. To postpone would cause further delay, and use of further Tribunal resources creating further cost to the public purse both of which are contrary to the overriding objective.
25. For those same reasons I do not consider that it is in accordance with the overriding objective to adjourn pursuant to Rule 29 or 41 namely the general case management powers, and ability to regulate the procedure.
26. I am aware that it is open to me in accordance with Rule 47 to proceed in the absence of the parties, and the powers to regulate my procedure pursuant to Rule 21 could allow for that to take place on the papers. That could prevent further delay and expense and allow for consideration of the issues, especially given that the Respondent has failed to submit an ET3 or engage. I am not however, satisfied that that would be appropriate in circumstances where the Claimant has provided no evidence in support of her claim, or complied with directions. The burden of proof for a claim for arrears of pay pursuant to section 13 of the Employment Rights Act 1996, or for a claim for breach of contract, rests upon the Claimant.
27. For completeness I note that the Claimant has failed to provide any evidence that the Respondent, who is an individual, employed her. I note that whilst the Claim has been accepted the ACAS certificate provides that "Coffee in Cowes" was the prospective employer, and according to Companies House that is a limited company. There are also no details provided in respect of when the alleged sums would have been payable and therefore whether the claim is in time and that the Tribunal has Jurisdiction. I would therefore have dismissed the claim in any event as the Claimant has not proven her claim.

Employment Judge Lang
Date 9th January 2023

JUDGMENT SENT TO THE PARTIES ON
19 January 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE