



EMPLOYMENT TRIBUNALS

Between:

Mr E Stratis
Claimant

and

Telecom Solutions GB Ltd
Respondent

AT A HEARING

Held at: Nottingham

On: Monday 14 May 2018

Before: Employment Judge Clark (sitting alone)

Representation

For the Claimant: Did not attend and was not represented

For the Respondent: Mr Long. Manager.

JUDGMENT

The claimant's claim for a declaration that the respondent has failed to provide an itemised pay statement **fails** and is dismissed.

REASONS

1. This is a claim for a declaration that the respondent has failed to provide itemised pay statements to the claimant. There is no claim for a monetary award as there is no allegation of any deductions having been made and it seems to be common ground that the claimant received the gross figure expected.
2. The claimant was not in attendance today. That was not a surprise in view of the procedural history to this claim. The start of the hearing was delayed by 15 minutes whilst I asked my clerk to make enquiries of the claimant. Contact was made and he stated he was at work and would not be attending. There was no application to

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adjourn and relist the hearing. Under rule 47 of the 2013 rules of procedure, I may dismiss the claim or decide it.

3. The procedural history is this. The claim was presented on 22 November 2017 following early conciliation. It relates to his engagement with the respondent over the 20 months up to August 2017. Usual direction orders were made on 28 December 2017 and sent to the parties. Disclosure was due by 8 February 2018, witness statements by 8 March. The claimant did not comply. It seems the reason was that he did not know about them because he had failed to notify the tribunal of his change of address which occurred on or around 15 December 2017, very soon after the claim was lodged. Neither did he make any adequate arrangements for his post to be forwarded; nor did he make enquiries with the tribunal in the initial months that followed the presentation of his claim.

4. Contact was eventually established with the claimant on 4 May 2018. All documents were re sent to the claimant and EJ Hutchinson made a new case management order simply requiring the parties to exchange the documents on which they intended to rely by 10 May 2018.

5. On 8 May, the claimant sought the transfer of his case to Croydon. The application was refused by REJ Swann.

6. On 10 May, at 13.19, the respondent emailed the tribunal to say it had received nothing from the claimant and applied to have the claim struck out. That application was a little premature as the order did not technically expire until midnight. Later that day, the claimant emailed the tribunal attaching some bank statements showing the payments received from the respondent. That was not sent to the respondent and he was therefore in breach of the order. The was not an oversight, despite being told verbally by a clerk that the order was for the documents to be sent to the respondent, the email makes clear it was being sent only to the Tribunal. The following day, that is last Friday, he emailed the tribunal again attaching some more bank statements and a printout showing he was booked on a return flight to Athens in August 2017.

7. Against that background and his non attendance today, it seems to me it is open to me simply to dismiss the claim under rule 47.

8. However, even taking the most generous interpretation of the information before me, I must dismiss the claim on the merits. There is no application for an adjournment. To succeed in his claim, the burden rests with the claimant to show he was an employee of the respondent. The respondent says he was an independent I.T. contractor. The information I have shows there was an economic relationship between the parties. It shows that an amount of money was paid monthly to the claimant. It shows, (if I accept the claimant's contention) that he received a payment from the respondent even when he had travelled to Greece for three weeks. That is consistent with either party's contention and not determinative of his status as an employee. For the respondent, Mr Long said how the claimant was a contractor who could work remotely and usually worked away from the respondent's premises. It didn't matter to the respondent where he did the work and he could have done it abroad with appropriate IT connections.

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9. A claim for an itemised pay statement is, for the time being at least, only available to employees. It is a prerequisite that the claimant shows he is an employee. The evidence before me does not show that and the claim is bound to fail for that reason. Whether I decide the matter today on its merits or deal with it solely in respect of the claimant's non attendance I reach the same conclusion, namely that the claim will be dismissed.

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Employment Judge Clark
Date: 14/5/2018.....

JUDGMENT SENT TO THE PARTIES ON
18 May 2018

AND ENTERED IN THE REGISTER
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FOR SECRETARY OF THE TRIBUNALS