



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. B Challoner  
**Respondent:** Penny Hydraulics Ltd  
**Heard at:** Nottingham  
**On:** Thursday, 12<sup>th</sup> July 2018  
**Before:** Employment Judge Heap (Sitting Alone)

## Representation

**Claimant:** No attendance or representations  
**Respondent:** Mr. T Penny - Service Director

# JUDGMENT

1. The claim is dismissed under the provisions of Rule 47 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 given the non-attendance of the Claimant at this hearing.
2. The Respondent has applied for a Preparation Time Order. If the Claimant wishes to resist that application then he must make written representations setting out the grounds upon which he resists it by no later than **14 days** from the date that this Judgment is sent to the parties. The Claimant must at the same time state whether he wishes the application to be considered at a hearing or on the papers.

# REASONS

1. This claim was listed for a hearing which was set to commence at 10.00 a.m today. By 10.05 a.m, the Claimant had still not attended at the hearing centre and so I duly caused a clerk of the Employment Tribunal to telephone the Claimant to ascertain his whereabouts and whether he was on route to the hearing centre.
2. The clerk was unable to make telephone contact with the Claimant via the mobile telephone number which the Tribunal has on file. That was the number given by the Claimant on his ET1 Claim Form.
3. There does not appear to be any alternative telephone number with which to make contact with the Claimant. The clerk also checked with the listing section and ascertained that they had telephoned the Claimant yesterday and left a voicemail message for him reminding him that the hearing was today.

4. The clerk further checked that no telephone or e-mail messages had been received from the Claimant indicating that he was either on route or had difficulties in relation to attendance at the hearing centre today. Nothing, as I understand it, had been received from the Claimant in this regard and Mr. Penny has confirmed that neither he nor, to the best of his knowledge, anyone else at the Respondent had had any recent contact with the Claimant either regarding his non-attendance today.

5. I delayed the commencement of the hearing until 10.20 a.m. to allow the Claimant time to arrive in the event that he had been running late and had not managed to telephone or email to inform the Tribunal about that position. By 10.20 a.m. the Claimant had still not arrived nor was there any sign of him by the time that the hearing concluded at 10.30 a.m.

6. I have no reason to assume that the Claimant does not know about the hearing time and date given that the Notice of hearing which clearly set those matters out had been sent to him on 2<sup>nd</sup> June 2018. That letter set out the date, commencement time and location of the hearing in bold type. Moreover, it was clearly received by the Claimant given that on 28<sup>th</sup> June 2018 he applied to postpone the hearing and he reiterated that application on the same and further grounds on 3<sup>rd</sup> July 2018. Both applications referred to the hearing date as being on 12<sup>th</sup> July 2018. The postponement applications were later refused by Employment Judge Blackwell on 4<sup>th</sup> July 2018 and that was communicated to the Claimant on the same date.

7. In reply to that communication, the Claimant wrote a lengthy email to the Tribunal on 4<sup>th</sup> July 2018 indicating, amongst other things, that he was happy to proceed with the case and that he was *"looking forward to seeing you all on July 12"*.

8. It is clear, therefore, that the Claimant was aware of the date and time of the hearing and that he was to arrive in time for that hearing to commence at 10.00 a.m. Nothing has been received from the Claimant to suggest that he is impeded from attending today or that he had been delayed. The Claimant has emailed the Tribunal on a number of occasions – including from his mobile telephone - and so has that method of contacting the Tribunal as well as by telephone, the number for which is set out in letters sent to him. Attempts to contact the Claimant both yesterday and today have not been successful but I am entirely satisfied that he is aware of the hearing arrangements for the reasons that I have already said.

9. Against that background, I can only conclude that the Claimant's non-attendance today is a conscious and voluntary decision. I have decided therefore that I shall not adjourn the hearing to a later date as I have nothing at all to suggest that the Claimant would attend on that occasion either. Equally, the Claimant has not filed written representations or any other evidence which might cause me to consider proceeding with the hearing in his absence.

10. Instead, I consider the appropriate course in these circumstances to dismiss the claim under the provisions of Rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 given the Claimant's non-attendance at the hearing today. I have, before doing so, considered all information available to me after the enquiries that I have caused to be made regarding the Claimant's absence and which are set out above.

11. Although I have given these reasons orally at the hearing and, as such, they need only be given in writing if requested by the parties, I have nevertheless provided written reasons in order that the Claimant is able to understand why I have dismissed this claim.

**Application for a Preparation Time Order – Rules 75, 76 and 79 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013**

12. At the close of the hearing, Mr. Penny on behalf of the Respondent made an application for a Preparation Time Order. That application is made on the basis that it is said that the Claimant has been unreasonable in his conduct of the proceedings with regard to his non-attendance at the hearing today. As a result of that, the Respondent has been put to the time of preparing for today, including collating and putting together a hearing bundle. Mr. Penny tells me that he has spent a full two days preparing for the hearing in terms of getting together the relevant paperwork and preparation generally. Mr. Penny therefore seeks a preparation time order at the appropriate rate of £38.00 over a period of 12 hours.

13. I cannot determine this application today given that Rule 77 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 requires the Claimant to have had a reasonable opportunity, in writing or at a hearing, to make representations. The Claimant was not on notice of this application before today for fairly obvious reasons. He needs to be given that reasonable opportunity to respond, however, before the application is determined.

14. Therefore, as set out above, if the Claimant intends to resist the application then he must write to the Tribunal with the grounds upon which he resists it within 14 days of the date of this Judgment being sent to the parties. If he fails to do so, the application will be determined without further reference to him. When replying, the Claimant is to set out if he requires a hearing or if he is content for the matter to be dealt with on the papers and without a hearing. The Respondent for its part is satisfied that the application be dealt with without a hearing. The decision as to whether to hold a hearing should the Claimant request one will be a matter for an Employment Judge.

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Employment Judge Heap  
Date: 12<sup>th</sup> July 2018

JUDGMENT SENT TO THE PARTIES ON  
12 July 2018

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