



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Neath

**Respondent:** NSL Ltd

**Heard at:** Manchester Employment Tribunal

**On:** 08 November 2021

**Before:** Employment Judge Mark Butler

## **Representation**

Claimant: No attendance

Respondent: Mr R Lassey (Counsel)

# JUDGMENT (AT OPEN PRELIMINARY HEARING)

The claimant's claim for unfair dismissal is dismissed under Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations (the Rules).

## REASONS

1. The claimant presented a claim form on 22 January 2021, after having completed ACAS Early conciliation, which took place between 08 December 2020 and 19 January 2021. He brought a claim for unfair dismissal.
2. The respondent, in its ET3, expressed that the claimant had indicated a wrong end date to his employment, and that the correct date was 08 September 2020. In light of this the respondent pleaded that the claim was out of time and that the claim should therefore be struck out.
3. A Preliminary Hearing in this case took place on 10 June 2021, before Employment Judge Rice-Burchall. The claimant attended this hearing in person. Having considered the case EJ Rice-Burchall listed this case for an open Preliminary Hearing to take place on 08 November 2021. And listed the issues to be determined as including: whether the claim is out of time; whether the claimant

should be ordered to pay a deposit, and; general case management.

4. As part of case management, EJ Rice-Burchall directed that the claimant send to the respondent a schedule of loss by 20 July 2021. And that, in preparation for today's hearing, the parties should agree on a hearing bundle by 04 October 2021 and that the claimant serve on the respondent a witness statement by 29 October 2021. The claimant was to provide this same witness statement at least 2 days in advance of today's hearing.
5. Following the Preliminary Hearing of 10 June 2021, the claimant was sent a Notice of Hearing dated 08 July 2021, with the date of the Open Preliminary Hearing.
6. Today was the Open Preliminary Hearing listed by EJ Rice-Burchall.
7. My clerk informed me at 09.50am that the respondent representative and an observer were in the waiting room and ready for the hearing. However, the claimant had not yet turned up.
8. My clerk had requested that security contact her urgently if the claimant did arrive. At 10.08am the claimant had still not arrived at the tribunal hearing. My clerk called the phone number that the tribunal has as a contact number of the claimant and left a voicemail, to inform him of the hearing, as well as sending an email to the email address the tribunal has on file for the claimant.
9. At 10.15am, I asked my clerk to send a second email to the claimant to inform him that if the tribunal had not heard from him by 10.45am that I was minded to strike out his case for non-attendance.
10. At 10.45am, my clerk informed me that the claimant had still not arrived at tribunal and had made no contact with it either.
11. I started the hearing at 10.45am to enquire as to whether Mr Lassey knew of any reason as to why the claimant was no in attendance. He informed me that the claimant had not been in contact with the respondent since the Preliminary Hearing of 10 June 2021. That he had not engaged with the respondent in concluding the bundle for today's hearing, nor had he sent the respondent a witness statement.

### Law

12. Rule 47 of the 2013 ET Rules provide that if a party fails to take part or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing, in the absence of that party but, before doing so, shall consider any information which is available to it, after any enquiries that may be practicable about the reasons for the party's absence.

### Conclusions

13. The claimant did not attend at the hearing, despite having a notice of hearing for some 4 months informing him of today's hearing.
14. There was no information in the file that explains the claimant's absence, or that would give an indication that absence was likely. And no information was discovered following the enquiries that were made. I do not rule out that something untoward has happened, but simply note that if there has then that is information that the tribunal is simply not aware of at the time of making this decision.
15. In all these circumstances, I consider dismissing the claim pursuant to Rule 47 of the Rules to be the just course.

Costs Application

16. In light of the above, the respondent did raise a question of an application for costs based on the conduct of the claimant. This was not considered at this hearing, as the claimant ought to be given the opportunity to respond to any such application. Separate case management directions will follow in respect of that application.

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Employment Judge **Mark Butler**

Date\_\_08 November 2021\_\_

JUDGMENT SENT TO THE PARTIES ON

9 November 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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