



EMPLOYMENT TRIBUNALS

Claimant: Miss L Dunne

Respondent: Tamarillo

Heard at: Manchester (by CVP)

On: 10 February 2021

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: Not present or represented

Respondent: Mr T Normile (Partner)

JUDGMENT

The claimant's claims for a redundancy payment, notice pay and holiday pay are dismissed under Rule 47 of the Employment Tribunal Rules of Procedure 2013 by reason of her non-attendance at the hearing.

REASONS

1. The claimant lodged an Employment Tribunal claim on 22 October 2020. She claimed a redundancy payment, 2 week's statutory notice pay and 4 days' holiday pay. She gave her dates of employment as 11 June 2018 until 31 July 2020. She said that she was furloughed between April and July 2020 and that counted towards her continuous employment. The respondent defended the claim.

2. The only reason why this judgment was reserved was that technical problems with my microphone at the point when I was due to give judgment in the hearing meant Mr Normile could not hear me. I explained by phone to Mr Normile what my decision was and that the reasons and judgment would be sent to the parties in due course.

3. The Tribunal had prepared an electronic bundle of documents which included the Claim Form, the respondent's response form and copies of WhatsApp messages and explanatory statements provided by Mr Normile.

4. By a notice of hearing dated 7 November 2020 the parties were notified that the final hearing of the claim would take place today, 10 February 2021, at 10.00am. As the Code V at the start of this Judgment indicates, the hearing was due to take place by CVP video link.

5. The respondent is a partnership, the partners being Mr and Mrs Normile. The respondent was represented at the hearing by Mr Normile. The claimant had not joined the hearing by 10.10am. The Tribunal had attempted to contact her by telephone but her phone seemed to be turned off and went to answerphone.

6. I adjourned the hearing until 10.20am and the Tribunal left a voice message on the claimant's phone asking her to attend the hearing or email the Tribunal if she was having difficulty joining the video hearing. No communication was received from the claimant by 10.20 when the hearing resumed.

7. Rule 47 of the Employment Tribunals Rules of Procedure 2013 permits a Tribunal to dismiss a claim or proceed with a hearing in the absence of a party if a party fails to attend or be represented at a hearing. Before doing so, the Tribunal is required to consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

8. The Tribunal had no information about the reason for the claimant's non-attendance. I therefore considered whether it was in the interests of justice to dismiss the claim or proceed in the claimant's absence.

9. I decided the appropriate course of action was to dismiss the claim. Having heard from Mr Normile and read the WhatsApp messages he had sent to his employees in the bundle, I am satisfied that there is a genuine dispute as to whether or there was a break in the claimant's employment around March 2020. If there was, she would not have the 2 years' continuous employment required to claim a redundancy payment. I am also satisfied that there is a genuine dispute as to whether or not the claimant was given notice. In the Tribunal bundle there was a WhatsApp on 21 June 2020 which told the claimant that her employment ultimately would come to an end in July 2020. There was no evidence before me about the claimant's holiday pay entitlement or how much holiday she had already taken.

10. Given those disputes I decided the case was not one where I could uphold the claimant's claim based solely on the documents before me. I decided instead that it was in the interests of justice for me to dismiss her claim.

11. In the circumstances the claim is dismissed under rule 47 for non-attendance at this hearing. It is open to the claimant to apply for reconsideration of this Judgment within 14 days of the date the Judgment is sent to the parties if there is some reason why it is necessary in the interests of justice for the Judgment to be reconsidered.

Employment Judge McDonald
Date 10 February 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
12 February 2021

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