



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Miss B Owens

Nexus Health Group

Heard at: London South
Employment Tribunal

On:

10 January 2022

Before: Employment Judge Hyams-Parish

Representation:

For the Claimant:

The claimant did not attend

For the Respondent:

Ms S Sithanen (HR Manager)

JUDGMENT

It is the judgment of the employment tribunal that the claims for unpaid holiday pay and/or wages, and unlawful deduction from wages, fail and are dismissed.

REASONS

1. By a claim form presented to the employment tribunal on 14 January 2021, the Claimant brings claims of unpaid holiday pay and/or wages, and unlawful deduction from wages.
2. This case had originally been listed for a final hearing to take place on 6 October 2021. Both parties attended on that date. However, as it was not clear to the respondent what sums were owed, or how they had been calculated, Employment Judge Wright decided that the case could not proceed as a final hearing, and instead converted the case to a case

management hearing. She ordered the claimant to provide a document setting out how much she was claiming, how the amount had been calculated, and to provide copies of all documents relied upon. Employment Judge Wright also listed the case to be heard today. That date was confirmed in a case management order that was sent to the parties on 20 October 2021.

3. On 31 December 2021, the claimant wrote to the tribunal seeking a postponement of today's hearing as she said her employer would not authorise a day off. No further information was provided.
4. The application for a postponement was refused by Regional Employment Judge Freer as the application had been made too late. The claimant had also failed to copy the respondent into the correspondence.
5. On 7 January 2022, the claimant wrote to the tribunal to renew the application.
6. Prior to the hearing starting today, I asked the clerk to telephone, and speak to, the claimant, which she did. The claimant was informed that if she did not attend the hearing today, it was possible that the hearing could proceed in her absence.
7. At 10am I joined the remote hearing, which was attended by the respondent. I explained the claimant's situation to them and asked what their view was. They were opposed to any postponement of the hearing. They said that the hearing had already been postponed once and despite the claimant having been ordered to provide further information about her claim by Employment Judge Wright, they were still unclear what her claim was. They said that attempts to clarify matters had also failed.
8. I looked at the file and agreed that the claimant had sent in to the employment tribunal information relating to her claim, but that looking at it, I was still unclear about what was being claimed and how such sums had been calculated.
9. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations provides as follows:

If a party fails to attend or to 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.
10. Rule 2 of the same rules states as follows:

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.

11. I weighed up carefully whether to postpone the hearing or proceed in the claimant's absence. I decided not to postpone the case. The claimant had not provided very much information at all in support of an application to postpone the hearing. I do not know whether the claimant's current employer has been told about today's hearing, when they were told, and what their response was to any request for time off to attend the hearing. I bear in mind that this is the second time a final hearing has been listed, and this would be the second time the hearing would have to be postponed. With current waiting times for cases, the case would not be listed for hearing for another 6 months which would mean that there would be well over a year between any hearing date and the date that the claimant left the respondent's employment. For the above reasons, I decided that it would not be in accordance with the overriding objective to postpone the case.
12. Having decided to proceed in the claimant's absence, I determined that there was no evidence from which I could conclude that the claimant had not been paid monies owed to her, or had monies deducted from her wages unlawfully. I considered the additional information sent in by the claimant pursuant to the order of Employment Judge Wright. However, it was still unclear, and importantly it was still unclear to the respondent, what the claimant's claim was because, according to them, the claimant had been paid all that was owed to her.
13. Bearing in mind there is a burden on the claimant to prove the monies that she is owed, or alternatively that monies have been deducted unlawfully, and the claimant was not here to give evidence on these issues, I concluded that the claims were not well founded and should be dismissed.

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Employment Judge Hyams-Parish
10 January 2022

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