



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Smallwood

**Respondent:** Whiteline Taxi (Copeland) Ltd

**HELD AT:** Manchester via CVP

**ON:** 6 January 2022

**BEFORE:** Employment Judge McCarthy  
(sitting alone, by CVP, in public)

## REPRESENTATION:

**Claimant:** No one in attendance

**Respondent:** No one in attendance

# JUDGMENT

The Judgment of the Tribunal is that the claim is dismissed pursuant to Rule 47 of the Employment Tribunal Rules of Procedure 2013 (contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as amended), following the failure of both parties to the claim to attend or be represented at the final hearing listed to commence via video conferencing on 6 January 2022 for 2 days.

# REASONS

1. The claimant presented his claim on 10 December 2020, bringing claims for constructive unfair dismissal and unlawful deductions from wages. The respondent filed a response form disputing the claims on 8 February 2021.
2. The claim was listed in March 2021 for a two-day hearing on 6 and 7 January 2022, commencing at 10am. A Notice of Hearing confirming this listing was

sent to the parties on 31 March 2021. Case Management Directions were also sent to the parties on 31 March 2021.

3. A further Notice of hearing was sent to the parties on 20 December 2021, informing them that the hearing would now be by video conference. This further Notice also gave details of the pdf bundle of relevant documents and witness statements that should be provided to the Tribunal six working days before the hearing. Neither party was, to the Tribunal's knowledge, represented as at 20 December 2021 and so the further Notice was sent directly to the claimant and respondent.
4. As the Employment Judge assigned to hear the claim, I joined the CVP hearing room at 10am on 6 January 2022 to commence the hearing. I was informed by the clerk that none of the parties (or any representative they may have instructed) were in attendance in the waiting room. The clerk confirmed that she had not been contacted by the claimant or the respondent with regard to the hearing that morning regarding their attendance.
5. The clerk also confirmed that no pdf bundle had been provided to the Tribunal by the parties in advance of the hearing. I considered the paper file and noted that there was no record of any correspondence/contact from either the claimant or respondent following the further Notice of hearing dated 20 December 2021.
6. As neither the claimant or the respondent (and/or any representative they may have instructed) was in attendance, I asked the clerk to contact the parties by phone to establish whether they were attending, and if not, what the reason for non-attendance was. The clerk remained in the CVP hearing room in case the parties joined the CVP hearing room waiting room.
7. The Tribunal had a phone number for only the claimant and tried to call him but was unable to reach the claimant. As the Tribunal had email addresses for both parties, I asked the clerk to send an email to both the claimant and respondent reminding them of the hearing, asking whether they were attending the hearing, and asking them to contact the clerk if they were having difficulties logging into the CVP hearing room.
8. The clerk remained in the CVP hearing room until 11.20am on 6 January 2022, but neither the respondent or claimant (or any representative of either party) attended the hearing, contacted the Tribunal or responded to the clerk's email. The clerk also confirmed to me that she had now checked the Tribunal inbox to see if any documents or correspondence had come in from either party regarding the hearing and/or their attendance, but there was nothing.
9. On considering the paper file, I noted that the last correspondence on the file from the respondent to the Tribunal was a letter dated 19 May 2021 from its, then, representative. The last correspondence on the file from the claimant to the Tribunal was 6 April 2021.
10. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides that "*if a party fails to attend or 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 available to it, after any enquires that may be practicable, about the reasons for the party's absence".*

11. I did consider whether to proceed with the hearing in the absence of the claimant and respondent. However, I decided this was not appropriate given the claimant's main claim was one of unfair constructive dismissal. The burden of proof was therefore on the claimant to prove dismissal, but he had not provided any evidence to the Tribunal to support his claim. No pdf bundle (including witness statements) had been provided by either party prior to the hearing.
12. Having considered the overriding objective, all the information available to me and after the making of the enquires detailed above I have decided to dismiss the Claim in full.

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Employment Judge McCarthy

Date 7 January 2022

JUDGMENT SENT TO THE PARTIES ON

12 January 2021

FOR THE TRIBUNAL OFFICE

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