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EMPLOYMENT TRIBUNALS

Claimant: Trevor Martin
Respondent: Whitnell Contracts Ltd
Heard at: East London Hearing Centre (by telephone)
On: 02 July 2021
Before: Employment Judge Housego

Representation

Claimant: Did not attend and was not represented
Respondent: Tufail Hussain, Consultant of Croner

JUDGMENT

The claim is dismissed.

REASONS

Background

1. The claim is for holiday pay the claimant says was due at the end of his employment with the respondent. The case was listed for hearing (by telephone) at 2pm today. At 2pm the Claimant was not present. I adjourned the hearing until 2:30, which enabled me to peruse the papers. At 2:20 I telephoned the Claimant on the mobile phone number he gave on the claim form. I introduced myself as the judge hearing his claim, listed for hearing at 2pm today. He said "To be honest, I forgot all about it. I'm in a contracts meeting. Do I have to be there?". I said that was a matter for him. He asked if it would go ahead anyway. I said that it would. He asked if someone would brief him as to the outcome. I said I would send him my judgment, but (and

I was about to refer to Rule 47), and he ended the call. There were other voices audible, as plainly Mr Martin was in a conference. I telephoned him again at 2:25 but he did not answer the phone.

Law

2. Rule 47 provides:

“Non-attendance

47. 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.”

Reasons

3. There is no excuse for the non- attendance. Mr Martin simply forgot about it. It is not required of a judge to enquire of a non attending party why he is not present (*cf* Dimitriu v Testerworld Ltd (t/a De Pharmaceutical) (PRACTICE AND PROCEDURE -- appearance/striking-out) [2020] UKEAT 0088_19_1601, which points out (at paragraph 14) that it is not for the Employment Tribunal to remind parties of the hearings if they fail to attend), but I did so.
4. I therefore strike out the claim under Rule 47.
5. In any event the claim would have been struck out as out of time: the Claimant says that the effective date of termination was 28 August 2020, and the last date was 27 November 2020, extended by the Acas early conciliation period. That was 21-23 September 2020, 3 days. That takes the date to 30 November 2020. The claim was filed on 19 December 2020. The claimant advances no reason why it was not practicable for him to file his claim in time, and so it is also struck out for that reason.

Employment Judge Housego

5 July 2021