



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss O Henderson

**Respondent:** Rocco Johnson

**Heard at:** The Midlands West Employment Tribunal (remotely by CVP)

**On:** 28 July 2022

**Before:** Employment Judge Wilkinson

## Representation

Claimant: No attendance

Respondent: No attendance

# JUDGMENT

1. The claimant not having attended the hearing and no good reason having been provided for her none attendance, despite enquiries having been made, the claim is dismissed pursuant to rule 47 of the Employment Tribunal Rules.

# REASONS

1. The claim was received by the tribunal on 20 August 2021. The claimant initially claimed for unfair dismissal and unpaid wages.
2. By letter dated 21 October 2021 the Tribunal gave the claimant the opportunity to make representations as to why her claim for unfair dismissal ought to be struck out on the basis it had no reasonable prospect of success as her period of employment was under two years. The claimant did not reply to that letter and accordingly the unfair dismissal claim was struck out by Employment Judge Woffenden on 7 December 2021.
3. When striking out the claim Employment Judge Woffenden explicitly recorded that the remaining claim for unpaid wages remained listed for hearing on 28 July 2022 for three hours. This hearing has therefore been listed for a number of months and I am satisfied that the claimant has had

sufficient notice of it. The claim had initially been listed for two days on 27 and 28 July 2022 but the time estimate was reduced upon the strike out of the unfair dismissal claim.

4. In addition to the above the claimant has failed to respond to further directions and letters from the Tribunal:
  - a. On 22 July 2022 the Tribunal wrote to the claimant asking her to confirm the name of the respondent as she had issued a claim against an individual rather than a company. No reply was received.
  - b. On 9 March 2022 directions were made pursuant to rule 29 of the Employment Tribunal Rules of Procedure directing the claimant to provide a schedule of loss by 6 April 2022 and for both parties to file statements of evidence by 4 April 2022. Neither direction was complied with by the claimant.
5. In those circumstances the Tribunal has had no further correspondence from the claimant since the claim was issued in August 2021.
6. There has been no ET3 filed by the respondent and the respondent did not comply with the direction to file evidence by 4 April 2022. On 21 October 2021 a direction pursuant to rule 21 of the Employment Tribunal Rules of Procedure was issued.
7. In filing her ET1 the claimant only provided a postal address for the respondent. There is no telephone number nor email address on the tribunal file, however correspondence has been sent to the respondent by post.
8. The hearing commenced at 10:00 on 28 July 2022 as listed. Neither the claimant nor the respondent were present. Whilst there was a last minute change to the CVP room allocated for the hearing my clerk checked both rooms to ensure that neither party joined the wrong room. There was no attendance by either party in any CVP room.
9. I kept the CVP rooms open until 10:30. At that time I asked my clerk to telephone the claimant to check whether she was intending to attend. There was no answer.
10. Accordingly at 10:35 I concluded the hearing on the basis that neither party had attended.
11. I have considered the provisions of rule 47 of the Employment Tribunal Rules of Procedure which states:

*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.*
12. In this matter the claimant has provided no response to three important pieces of correspondence from the tribunal. The tribunal has limited information before it in respect of the basis of the claimant's claim for unpaid

wages. Her ET1 form is framed in generality (she refers to working 'an average of 92 hours'). She has provided no evidence either as to the hours she asserts she worked or her rate of pay – indeed the rate of pay is absent from the ET1.

13. The claimant has in particular failed to provide either any evidence to the Tribunal or a Schedule of Loss as directed in March 2022. These are in my view crucial documents when considering a claim such as this.
14. The case has been listed for over 11 months and the claimant has received both the original notice of hearing, the order of Employment Judge Woffenden which reminded of the date. Additionally a further notice of hearing confirming that the case would be heard at 10:00 on 28 July 2022 was sent to both parties on 22 July 2022, including to the claimant's email address.
15. I have borne in mind the overriding objective at rule 2 of the Employment Tribunal Rules of Procedure. In particular I consider the following to be relevant:
  - (b) *dealing with cases in ways which are proportionate to the complexity and importance of the issues.*
  - (d) *avoiding delay, so far as compatible with proper consideration of the issues; and*
  - (e) *saving expense.*
16. I also note that the parties are under a duty to *assist the Tribunal to further the overriding objective and in particular shall co-operate generally...with the Tribunal.*
17. In this case I am satisfied that the claimant has had sufficient notice of the hearing and that practicable enquiries have been made to confirm her non-attendance. I am satisfied that it is appropriate in all of the circumstances to exercise my discretion under rule 47 and accordingly I dismiss the claim.

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Employment Judge **Wilkinson**

Date: **28 July 2022**