



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Siwiec**

**v**

**Bartex DS Ltd**

**Heard at:**

Watford

**On:** 20 April 2023

**Before:**

Employment Judge Andrew Clarke KC

## **Appearances**

**For the Claimant:** Did not attend

**For the Respondent:** Mr S Feliha (Managing Director)

## **JUDGMENT**

1. The claims for unpaid monies and for race discrimination are struck out pursuant to Rule 37 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 on the ground that the claim has not been actively pursued.

## **REASONS**

1. This claim was commenced on 18 November 2021. The claimant alleged unfair dismissal, race discrimination and unpaid monies. In a rather confused paragraph 8.2 of his claim form the claimant asserted that he worked from 13 September 2021 to 18 September 2021 and that he was owed monies.
2. Doing the best that I can, it would appear that he asserts that he should have been paid at the rate of £170 per day, but that this sum was arbitrarily reduced shortly prior to his being paid. It may be that the explanation for this lies in the fact that the respondent considered itself statutorily obliged to deduct 20% of the sum otherwise payable by way of a withholding of tax.
3. There is also a suggestion that the claimant was due monies in respect of overtime which had not been paid. There is no quantification of this aspect of the claim whatsoever.

4. Furthermore, the text in paragraph 8.2 makes no mention of race discrimination, despite the box being ticked to indicate that this formed part of the claim.
5. The claimant had only five day's service and, hence, was not qualified to bring a claim for unfair dismissal. This was pointed out and he was invited to show cause why the claim should not be struck out. He did not show cause (rather, he accepted his lack of qualifying service by email) and that claim was ultimately struck out.
6. There was intended to be a telephone preliminary hearing on 27 July 2022, but it appears that that hearing did not take place. The file does not reveal why.
7. A further telephone preliminary hearing was then listed for 25 October 2022. The respondent attended by telephone, the claimant did not. The notes on the file record that he was telephoned twice but did not answer.
8. Employment Judge Warren made the following order:

“By no later than the date 7 days from the posting of this order to the parties, the claimant is to write to the tribunal, copied to the respondent, to explain his non-attendance today and why his claim should not be struck out on the grounds that it is not being actively pursued.”
9. That order was sent to the claimant by email on 5 November 2022. On 27 November, that is beyond the seven-day period identified in the order, the claimant asserted that he had been called by the tribunal:

“but it was of very poor quality and I heard almost nothing, and after more than one minute each time it was interrupted. I couldn't make a call. But I waited by the end of the day on the phone.”
10. He had been ordered to send that explanation not just to the tribunal but to the respondent, but he failed to copy the respondent.
11. Employment Judge Warren decided that the claim should be listed for a two hour in person hearing today. He also determined that the claimant was likely to need an interpreter and should be asked to identify the language in question.
12. The claimant was then written to in a letter containing the following:

“Your case will be listed for an attended closed preliminary hearing at Watford.

An interpreter will be arranged for you, please confirm for the avoidance of doubt what language that should be for.

If you do not attend the rearranged hearing, your case will be struck out.

You must reply to this letter by 30 January 2023.”

13. That letter was sent on 7 January 2023. It was followed on 11 January 2023 by a notice for a preliminary hearing for case management in standard form telling the parties of today's hearing and enclosing a blank agenda which the parties were told to complete and return to the tribunal, copying the other side, seven days before the hearing.
14. The claimant did not respond to the 7 January letter, whether by 30 January or at all. He did not provide a completed agenda.
15. The claimant did not attend today's hearing. My clerk telephoned the number on the tribunal file. The telephone was answered by the claimant. He was asked why he was not present at the tribunal for his hearing and informed my clerk that he was in Poland. He gave no explanation for his non-attendance. In particular, he did not say that he had been unaware of the hearing.
16. In the circumstances, I consider that the claimant has been given a reasonable opportunity to make representations both as to the future conduct of his case generally and, more specifically, as to why the case should not be struck out (having been warned of that possibility). He was specifically warned on 7 January that his non-attendance would lead to the case being struck out.
17. In those circumstances, I consider that this claim should be struck out pursuant to Rule 37 of the Rules of Procedure on the basis that "It has not been actively pursued." The claimant failed to attend the telephone hearing in October 2022. He has not provided a completed agenda. He has not responded to the tribunal's requirement that he indicate what language an interpreter is required for and he has not attended the hearing today.
18. In the circumstances, this claim must be and is struck out.

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Employment Judge Andrew Clarke KC

Date: 2 May 2023

Sent to the parties on: 18/5/2023

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For the Tribunal Office