



EMPLOYMENT TRIBUNALS

Claimant: Mr B Voeght

Respondent: James Mclaughlin

Heard at: Manchester (by CVP)

On: 7 February 2023

Before: Employment Judge Phil Allen (sitting alone)

Representatives

For the claimant: Did not attend and was not represented

For the respondent: Did not attend and was not represented (no response having been submitted)

JUDGMENT

The Judgment of the Tribunal is that:

- (1) The claim for unfair dismissal is struck out.
- (2) The claim for unauthorised deduction from wages is dismissed under rule 47, the claimant having failed to attend or be represented at the hearing.

REASONS

(1) One of the claimant's complaints was of unfair dismissal. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years service to make an unfair dismissal complaint. The claimant was employed by the respondent for less than two years. Therefore, the claimant is not entitled to bring that claim. The claimant has failed to give an acceptable reason, despite being given the opportunity to do so, why the complaint should not be struck out. Accordingly, the claim for unfair dismissal is struck out.

(2) The claimant's other complaint was for unauthorised deduction from wages, for one month's pay. That was listed to be heard and determined on 7 February 2023. The hearing was conducted by CVP remote video technology. The claimant failed to attend or be represented at the hearing. No documents or statements were provided by the claimant prior to the hearing. The claimant had joined the CVP room prior to the hearing, but he was no longer connected when the hearing was due to start. Three emails were sent to the claimant to try to enquire about whether he would be

attending, but the claimant did not respond within the 45 minutes allowed for a response. The hearing was ready to start for 45 minutes but the claimant did not attend. He did email after the hearing had concluded, nobody having attended (or having successfully attended). The claimant had not provided a telephone number and therefore could not be contacted in that way in the time available. As the claimant did not attend (or successfully attend) and applying the overriding objective of dealing with cases fairly and justly and, in particular, dealing with cases in a way which is proportionate to the complexity and importance of the issues, the claim is dismissed under rule 47, the claimant having failed to attend the final hearing arranged to determine his unauthorised deduction from wages claim.

(3) Had the claimant attended the hearing, there would in any event have been a number of issues to have been addressed in his claim for unauthorised deductions from wages (over and above the need for him to prove that he had been employed by the named respondent and that there had been an unauthorised deduction from his wages). The first of those issues in particular, was relevant to the decision to dismiss the claim under rule 47 when applying the overriding objective as explained. The issues included the following:

- (i) The claim form was presented to the Tribunal on 22 February 2022. Following rejection, an ACAS Early Conciliation certificate for the period from 9 February to 22 March 2022 was provided. A new form was not presented, the certificate was provided with an email. As the claimant does not appear to have had an ACAS EC certificate when the claim was started and the claim form was presented, under section 18A(8) of the Employment Tribunals Act 1996 it does not appear that the Tribunal had jurisdiction to determine the claim (applying the decision in *Pryce v Baxterstorey Limited* EA-2020-323);
- (ii) The claimant stated on the claim form that he worked at an address in South Africa. The Employment Rights Act 1996 only applies if (in summary) the employment was in Great Britain or if the employment relationship had much stronger connections with Great Britain and with British employment law than with any other system of law; and
- (iii) The claimant would have been unable to give evidence from South Africa, if he was intending to do so, for the reasons outlined in the Presidential Guidance on taking oral evidence by video or telephone from persons located abroad.

Employment Judge Phil Allen
7 February 2023

JUDGMENT SENT TO THE PARTIES ON
10 February 2023

FOR THE TRIBUNAL OFFICE

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