



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr B Rai

v

**Respondent:**  
Mr K Aziz Dar

**Heard at:** Reading  
(by video using CVP)

**On:** 8 January 2021

**Before:** Employment Judge Hawksworth (sitting alone)

## Appearances

**For the Claimant:** No attendance or representation

**For the Respondent:** In person

## JUDGMENT

The claimant's claim for arrears of pay is dismissed under rule 47 of the Employment Tribunal Rules of Procedure 2013.

## REASONS

1. The claimant Mr Rai claimed arrears of pay in the sum of £2,146 relating to the period 10 March to 13 August 2019. It was agreed that, after Mr Rai started his employment tribunal claim, the respondent Mr Aziz Dar paid Mr Rai the sum of £2,150 on 18 May 2020.
2. A telephone preliminary hearing was held on 5 June 2020 (the hearing was originally due to be the main hearing but this could not take place because of the covid-19 pandemic). At the preliminary hearing, Mr Rai agreed that he had received payment of the arrears he was claiming. He said that he wanted to continue his claim as he had sustained financial losses attributable to the 10 month delay in payment.
3. At the preliminary hearing it was agreed that the issues for determination at the main hearing today would be:
  - (i) Has Mr Rai's claim been settled? Mr Aziz Dar says that £2,150 was paid in settlement of the claimant's claim.
  - (ii) If the claim has not been settled, was Mr Rai a worker of the respondent? You must be a worker to be able to bring a claim for arrears of pay (known as a claim of unauthorised deduction from

wages under section 13 of the Employment Rights Act 1996). Mr Aziz Dar says Mr Rai was a self-employed contractor.

- (iii) If Mr Rai was a worker, has he sustained any financial losses attributable to the late payment of his pay? If so, can the tribunal order Mr Aziz Dar to pay compensation for these losses under section 24(2) of the Employment Rights Act 1996, should it do so and if so what amount would be appropriate in all the circumstances?
4. At the preliminary hearing I made case management orders including an order for disclosure of documents. I explained to Mr Rai and Mr Aziz Dar what sort of documents would be required by way of evidence and recorded this in the case management summary.
5. Mr Aziz Dar attended the hearing today and provided copies of invoices in support of his view that Mr Rai was a self-employed contractor. Mr Rai did not attend the video hearing today. It was due to start at 10.00am. I waited until 10.20am before starting the hearing.
6. Mr Rai was aware of this hearing date as he was present at the preliminary hearing when the date was set. He was also sent a copy of the case management summary which included notice of today's hearing. Another notice, explaining the arrangements for the hearing to be conducted by video, was sent to Mr Rai using the contact details held on file for him. The tribunal staff were unable to reach Mr Rai yesterday when trying to contact him to confirm his attendance. There has been no contact from Mr Rai with the tribunal since the preliminary hearing.
7. I have considered the information available to me for Mr Rai's non-attendance. I have not been provided with any explanation. I am not able to decide the outstanding issues in Mr Rai's case without evidence from him. It appears that Mr Rai no longer wishes to pursue the outstanding elements of his claim. It would not be in accordance with the overriding objective to postpone the hearing as the date was arranged over 6 months ago, with the agreement of Mr Rai, after the first hearing was unable to go ahead because of the Covid-19 pandemic. A postponement would lead to considerable further delay in concluding the matter. I have decided that in the circumstances Mr Rai's claim should be dismissed under rule 47 of the Employment Tribunal Rules of Procedure (non-attendance).

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**Employment Judge Hawksworth**

Date: 8 January 2021

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office

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