

**IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH**

5 **Judgment of the Employment Tribunal in Case No: S/4100557/2017 Issued**  
**Following Open Preliminary Hearing Held at Edinburgh on the 11<sup>th</sup> of September**  
**2017 at 2 pm**

10 **Employment Judge: J G d'Inverno, QVRM, TD, VR, WS (Sitting Alone)**

15 Mr J Black

Claimant

15 Fife Scottish Omnibuses Ltd

Respondent

20 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**Edinburgh 11<sup>th</sup> September 2017**

25 **(First)** On the documentary evidence and agreed facts presented and on the  
submissions made at Open Preliminary Hearing, the Employment Judge not being  
satisfied, at this juncture in proceedings and before the hearing of oral evidence, that the  
claimant's allegation that the respondent's decision to summarily dismiss him fell, in all  
the circumstances of the case, outwith the band of reasonable responses for the  
purposes of section 98(4) of the Employment Rights Act 1996 has little reasonable  
30 prospect of success, the Employment Judge refuses the respondent's representative's  
Application for the making of a Deposit Order, in terms of paragraph 39 of Schedule 1 to  
the ETs (Constitution and Rules of Procedure) Regs 2013 in respect of that allegation.

35 **(Second)** Records for the purposes of the Final Hearing set down in the case for 21<sup>st</sup>,  
22<sup>nd</sup> and 26<sup>th</sup> September 2017 the claimant's admissions, made at the bar on his behalf  
by his representative:-

- 1) That the claimant answered his mobile telephone whilst driving on the 14<sup>th</sup> of January 17 on the journey from Aberhill Depot to Inverness on one occasion in addition to the occasion which he describes as “an emergency situation”.
- 5 2) That the respondent’s policy on mobile phones is as set out in the respondent’s Policy Handbook at paragraph 1.2.1 which is produced at page 40 of the Joint bundle of documents.
- 10 3) That the use of a mobile telephone whilst driving (except in an emergency situation) can constitute a criminal offence.
- 15 4) That the claimant used his mobile telephone twice while driving on the journey from Aberhill Depot to Inverness on 14<sup>th</sup> January 2017; on one occasion which he asserts was an emergency situation and on one occasion which he accepts was not an emergency situation.
- 20 5) That the notes of the consequential Disciplinary Hearing which are produced by the respondent are an accurate reflection of the proceedings and are notes in respect of which the claimant, although given the opportunity at the outset of the Appeal Hearing to take issue with, did not issue with.
- 25 6) That, as is set out on page 2 of the Disciplinary Hearing notes the claimant, in the course of the Disciplinary Hearing, made the following statement in relation to his non-emergency usage of his mobile telephone:-  

*“It was ready to go, I had already set it but couldn’t get a signal in Aberhill Depot to start it. So only had to push a button. Needed to know how to get to Inverness Depot. I don’t know if my mind was on other things. I was waiting on results from my GP so I was thinking of that. I don’t know where my head was, just a mess.”*
- 30 7) That the Disciplining Officer’s response to that statement was:-

*“The obvious issue here is a breach of company policy but more importantly, the law.”*

8) That the claimant’s response in turn was:-

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*“I spoke to Graham Walker (Police Liaison) before he says they wouldn’t have booked me for it under the circumstances, but they’d have had a strong word and told me to behave. I know what’s happening is not right, I am only asking the company to look at the circumstances surrounding it. I’m not saying I’ve done nothing wrong, that’s not the case.”*

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9) That use of a mobile phone whilst driving would include picking it up and operating it, even momentarily, and doing so would constitute a breach of the respondent’s policy at paragraph 1.2.1, page 40, of the Joint Bundle; and that the claimant accepts that this happened on the first of the two occasions outlined above.

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**(Third)** Continues the case to the Final Hearing set down to proceed at Edinburgh on 21<sup>st</sup>, 22<sup>nd</sup> and 26<sup>th</sup> September 2017 at 10 am.

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**NOTE**

The Judgement, together with Reasons therefore, was delivered orally by the Employment Judge to the respondent’s representative who received the same both on his own behalf and by agreement in a representative capacity for and on behalf of the claimant’s representative, at the conclusion of the Open Preliminary Hearing on 11<sup>th</sup> September 2017. Accordingly, no written Note of Reasons is attached to this written copy of the Judgment.

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5 Employment Judge: Joseph d'Inverno  
Date of Judgment: 12 September 2017  
Entered in Register: 12 September 2017  
and Copied to Parties