

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No S/4100484/2017

Sitting in Glasgow

Employment Judge: Ms Rosie Sorrell

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Miss Laura Docherty

**Claimant
Not Present and
Not Represented**

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The Olympia Chip Shop

**Respondent
Represented by:
Mr P Santoni –
Solicitor**

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APPLICATION FOR RECONSIDERATION

**(Under Rules 70-72 of the Employment Tribunals (Constitution and Rules of
Procedure) Regulations 2013)**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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It is the judgment of the Employment Tribunal that:-

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- 1) The “original decision” of 5 September 2017 to dismiss the respondent’s application to strike out the claims of pregnancy and maternity discrimination, sex discrimination, holiday pay, redundancy pay and notice pay is revoked.
- 2) The decision, having been taken again and in light of the respondent’s representations, is to allow the respondent’s application to strike out the claims of pregnancy and maternity discrimination, sex discrimination, holiday pay, redundancy pay and notice pay.

REASONS

1. On 11 August 2017, the claimant failed to appear at the Preliminary Hearing
5 ('PH') in respect of her claims of pregnancy and maternity discrimination, sex discrimination, holiday pay, redundancy pay and notice pay. Prior to commencement of the 'PH,' the Clerk attempted to contact the claimant on both her landline and mobile telephone numbers without success. I therefore decided in accordance with Rule 47 of the Employment Tribunal Constitution and Rules of Procedure Regulations 2013 ("ET Regs 2013"), that the 'PH'
10 should proceed in her absence.
2. At the 'PH' Mr Santoni, for the respondent sought for these claims to be struck out on the grounds set out in Rule 37 (a-d) of the "ET Regs 2013" for
15 the reasons detailed in the "original decision" of 5 September 2017.
3. At 1.20p.m after the conclusion of the 'PH' on 11 August 2017, the Tribunal office took a telephone call from the claimant who said that she had been unable to attend the Hearing as she had recently been in hospital for a gall
20 bladder operation.
4. The respondent's application was dismissed for the reasons detailed in the "original decision" of 5 September 2017.
5. On 11 September 2017 the Tribunal offices received a reconsideration application from the respondent. This was sought on the basis that the
25 claimant's explanation for her non-appearance at the 'PH' was not communicated to the respondent for their comments, even though it was taken into account in terms of the "original decision" and that the claimant should have been ordered to produce medical evidence and a letter from her employer confirming her position. The respondent further stated that it
30 was content for this application to be considered by way of written representations.

6. Upon initial consideration of the reconsideration application, the claimant was given 14 days to respond to the application, but no response was received.
7. The Tribunal thereafter wrote to parties' advising that the respondent had made representations that the reconsideration application may be determined without a hearing and that no response had been received from the claimant within the time-scale given. Parties' were further informed that on the basis of the respondent's representations, I had decided under Rule 72 (2) of the "ET Regs 2013" that a hearing was not necessary in the interests of justice and that the application would be determined by way of parties' written representations. Accordingly, parties' were given 14 days to make further written representations and for the claimant to submit medical or other evidence in support of her position that she was unable to attend the hearing on 11 August 2017.
8. The clamant has not responded to this correspondence.
9. On 20 October 2017 the respondent made representations that in the absence of medical or other evidence from the claimant being produced, that the Tribunal may have been misled by the claimant as to the true reason why she was not present or represented at the 'PH' at which she failed to attend and consequently, that can only be regarded as a wilful failure to be present at a Hearing. The respondent therefore requested that the Tribunal consider striking out the claim because of her failure to attend at the last 'PH' and furthermore, that her failure to provide the information requested could be regarded as a further breach of the rules as if no such information exists, it would tend to indicate that the conduct of the claimant could be regarded as unreasonable in not providing adequate and sufficient information to the Tribunal in support of the reason for her non-appearance at the 'PH.'
10. Having considered the respondent's written submissions, I am of the view that the "original decision" of 5 September 2017 should be revoked. For the reasons detailed in the "original decision" of 5 September 2017, the

respondent's application to strike out the claims under Rule 37 (a) and (c) of the "ET Regs 2013" does not succeed. Notwithstanding that, I have taken the view that the respondent's application does succeed under Rule 37 (b) and (d) of the "ET Regs 2013."

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11. In terms of Rule 37 (d) I consider that the claim has not been actively pursued. In spite of the claimant contacting the Tribunal after the 'PH' to provide an explanation for her non-attendance, she has not responded in any form to the respondent's reconsideration application. Nor has she produced any medical or other evidence in support of the reason for her non-attendance at the 'PH.'

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12. In light of the claimant's complete failure to respond, I am of the view that this tends to cast considerable doubt over her explanation for the non-attendance at the 'PH' and that the Tribunal may have been misled as to the true reason for her non-appearance. In applying the authority of **Blockbuster Entertainment Ltd v James 2006 IRLR 630, CA**, I am therefore persuaded that the manner in which the proceedings have been conducted by the claimant has been unreasonable.

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13. In reaching this decision, I have applied the authorities of **De Keyser Ltd – v- Wilson 2001 IRLR 324 EAT** and **Bolch –v- Chipman 2004 IRLR 140** and consider that the strike out of these claims under Rule 37 (b) and (d) of the "ET Regs 2013" is a proportionate response as the claimant is not actively pursuing her claim and therefore a fair trial is no longer possible. Furthermore, in view of the reasons that have led me to this decision, I consider that this is the appropriate remedy in the circumstances.

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14. For these reasons, the respondent's application succeeds under Rule 37 (b) and (d) of the "ET Regs 2013" and according the claims are struck out.

5 Employment Judge: Rosie Sorrell
 Date of Judgment: 15 November 2017
 Entered in register: 20 November 2017
 and copied to parties

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