



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4118425/2018 Preliminary Hearing at Edinburgh on 16 November 2018

Employment Judge: M A Macleod (sitting alone)

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Maria Law

Claimant
Not Present and
Not Represented

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Four Seasons Health Care (Scotland) Limited

Respondent
Represented by
Mr D Hay
Advocate

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim is dismissed.

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REASONS

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1. The claimant in this case presented a claim to the Employment Tribunal on 10 September 2018, in which she complained that the respondent had unfairly dismissed her from their employment.
2. The respondent submitted an ET3 response in which they argued that the Tribunal lacked jurisdiction to hear such a claim on the basis that the

claimant did not have the necessary minimum qualifying service in her employment with the respondent.

3. A Preliminary Hearing was fixed to take place in order to determine this issue. Mr Hay, Advocate, appeared for the respondent. The claimant did
5 not appear, nor was she represented.

4. Rule 47 of the Employment Tribunals Rules of Procedure 2013 provides:

*“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available
10 to it, after any enquiries that may be practicable, about the reasons for the party’s absence.”*

5. The circumstances known to the Tribunal were these. The claimant submitted her claim with the benefit of legal representation, in the form of Messrs Thompsons, solicitors. This hearing was fixed by Notice of
15 Preliminary Hearing dated 25 October 2018, sent to the legal representatives of each party.

6. On 1 November 2018, William McParland of Messrs Thompsons wrote to the Tribunal to confirm that they had withdrawn from acting for the claimant, and that all future correspondence should be directed to the claimant at a
20 postal and also an email address. They also copied the claimant into that email, and sought an extension of time for providing the basis upon which she claimed to be entitled to claim unfair dismissal.

7. Mr Hay confirmed that on the same date, his instructing solicitors, Messrs Eversheds Sutherland, had written to the claimant at her email address
25 asking her to consider withdrawing her claim. No response was received to that email. No further correspondence followed, between the parties.

8. On 13 November 2018, the Tribunal wrote to the claimant by email advising her that she was to supply the information requested in the Tribunal’s letter of 19 October (seeking clarification as to the basis upon which she
30 maintained her unfair dismissal claim) by return.

9. No response having been received to that email by 15 November 2018, the Tribunal sent to her a further email advising that the information sought, and the question of why the claimant had not yet provided it, would be discussed at the start of the Preliminary Hearing.

5 10. Later on 15 November, a further email was sent by the Tribunal to the claimant to advise that this hearing would commence at 10.30am.

11. No response was received by the Tribunal to any of these emails.

10 12. The Tribunal clerk informed me at approximately 10.45am that the claimant had not attended. The clerk also advised that the Tribunal does not hold a telephone contact number for the claimant.

15 13. In light of this, I commenced the hearing at approximately 10.50am, and sought further information from Mr Hay. Other than the email sent by his instructing agents to the claimant on 1 November, there was no further contact between the parties to the date of this hearing. They had not received any correspondence from the claimant following the withdrawal of her solicitors from acting.

20 14. There being no further information available, I heard Mr Hay's application, which was, under Rule 47, either to dismiss the claim or to proceed with the hearing on the basis that the respondent had a witness who was present and available.

15. I considered the matter but took the view that to proceed with the hearing would be inappropriate and likely to be a fruitless use of time.

25 16. In this case, the claimant has made no contact whatsoever with the Tribunal since the withdrawal of her agents on 1 November, despite several emails being sent to her directly seeking a response.

17. In light of this, it appears to me to be in the interests of justice to dismiss the claim on the basis that the claimant had not attended at this hearing, nor had she been represented. She made no contact with the Tribunal at all after 1 November, and made no application to postpone this hearing, for

example, in order to seek new representation, or because the date was unsuitable to her for reasons unknown to the Tribunal. If the Tribunal were to adjourn this hearing, there is simply no reason to believe that the claimant would respond to any further correspondence, or attend the reconvened hearing. Proceeding to hear the case on the basis of the respondent's evidence seemed to me to be a very poor use of the Tribunal's time, since, if the claimant has a sound basis upon which to seek reconsideration of an unfavourable judgment from this hearing, that would then require the re-hearing of the same evidence in the presence of the claimant.

18. It is open to the claimant to seek reconsideration of this Judgment, though it is necessary for her to disclose to the Tribunal a proper basis and explanation upon which it could do so.

19. Accordingly, it is my judgment that the claim should be dismissed under Rule 47 on the basis of the claimant's non-attendance at this hearing.

Employment Judge: Macleod
Judgment Date: 16/11/2018
Entered Into the Register: 16/11/2018
And Copied to Parties