

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4107809/2017

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Held in Glasgow on 16 May 2018

Employment Judge: David Hoey

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Ms BJ Foy

Claimant
Represented by:-
Mr William McParland –
Solicitor

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Blue Lagoon (Fish And Chip Shops) Ltd

Respondent
Represented by:-
Mr PJ Harvey –
Solicitor

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JUDGMENT FROM EMPLOYMENT TRIBUNAL

30 As the Claimant failed to attend the Hearing that was fixed to determine the matter on 16 May 2018, the Claim is dismissed.

1. The matter called on 16 May 2018 for a 3-day Hearing on liability and remedy. Both parties were represented.

2. The Claimant had instructed a solicitor, Mr McParland. The Respondent had
35 also instructed a solicitor, Mr Harvie. Prior to the commencement of the Hearing, I was advised that the Claimant had not attended in person nor

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contacted her solicitor. The Claimant's solicitor had tried to contact her over the last few days but to no avail.

3. At 10am, when the Hearing was scheduled to commence, I asked the clerk to contact the Claimant on the number the Tribunal Service had for the Claimant to check the position. The clerk was unable to speak with the Claimant but left a message asking the Claimant to contact the Tribunal office as a matter of urgency. I delayed commencement of the Hearing to allow the Claimant sufficient time to respond to that message or to contact her solicitor.
4. In the absence of a response, at around 10.15am the Hearing commenced. Mr McPartland advised me that he was unable to provide an explanation for the nonattendance of the Claimant. He had met with her six days before the Hearing to prepare. The Claimant knew that the case was to proceed today and that she was to attend. Mr McPartland had agreed a number of action points for the Claimant, including checking the position with witnesses and producing documents.
5. The Claimant had not responded to Mr McPartland's requests. Mr McPartland had last spoken to the Claimant on Sunday but his attempts at contacting the Claimant by telephone and by email had thereafter proved fruitless.
6. In all the circumstances Mr McPartland sought a postponement of the Hearing. He was unable to explain why the Claimant was not in attendance. I offered further time to contact the Claimant but Mr McPartland stated that this would be fruitless.
7. Mr Harvie objected to the application to postpone the Hearing and his primary position was that I dismiss the Claim. A 3-day Hearing had been fixed. The Claimant had a responsibility, he maintained, to keep in touch with her solicitor and to properly prepare for and progress her claim. She had been given enough time to justify why she was not attending the Hearing and had made no effort to do so.

8. Mr Harvie was concerned that allowing a postponement would simply result in further delays and expense being incurred.

9. I canvassed with the parties an alternative option which was to order the Claimant to advise the Tribunal in writing (in accordance with Rule 37(1)(d) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules")) why her claim should not be struck out on the basis that it was not being actively pursued. Mr Harvie's principal position was that the Claim should be dismissed given the attempts to contact the Claimant. Mr McPartland advised that if a postponement was not granted, he would need to withdraw from acting for the Claimant.

10. I delayed matters for a short while to ascertain from the clerk whether or not the Claimant had returned the call. No communication had been received from the Claimant.

11. I considered the applications before me and all the facts. I took into account that the Claimant knew that the Hearing was to proceed and had been given action points by her solicitor. The Claimant had not returned her solicitor's calls nor actioned the points he needed to allow him to fully progress the claim. I took into account that a number of telephone calls and emails had gone to the Claimant urgently seeking her to confirm the position, all of which had gone without a response. I also took into account the fact that the Respondent was in attendance and ready to proceed. The Claimant was not in attendance and her solicitor was unable to explain why she had not attended.

12. I decided that in terms of Rule 47 of the Rules it was appropriate to dismiss the Claim. I had considered all the information available to me as provided by both solicitors and the Tribunal Service. I also considered the various attempts that had been made to contact the Claimant and the fact she had not responded to the action points required of her by her solicitor.

13. I noted that Rule 70 allows the Claimant, if so advised, to seek a reconsideration of this judgment. For example, if there was good reason why she was unable to respond or engage with the process to actively pursue her claim, Rule 70 allows her to make an application to seek a reconsideration of the decision to dismiss her claim within 14 days of the date this decision is sent.

14. I also noted that Mr Harvie can consider the position in relation to expenses and make a written application if so advised.

15. In all the circumstances the Claim is dismissed.

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Employment Judge: David Hoey
Date of Judgment: 16 May 2018
Entered in register: 29 May 2018
and copied to parties

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