

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100407/2018

Held in Glasgow on 6 April 2018

Employment Judge: Ian McPherson

Mr Brian John Galloway

**Claimant
Not Present and
Not Represented**

Swc Security and Training

**Respondent
No Appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:-

- (1) The claimant having failed to appear or to be represented, the Tribunal, of its own initiative, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, proceeded in the absence of the claimant;
- (2) After considering the information available to it, after unsuccessful telephone enquiries to the claimant, to enquire about his failure to appear or be represented, the Tribunal struck out the claim, in terms of **Rule 37(1)(d) of the Employment Tribunal Rules of Procedure 2013**, for want of active prosecution by the claimant, on account of his failure, without any proper explanation, to appear or be represented on 6 April 2018 at the Final Hearing assigned to consider his claim against the

respondents, and it appearing to the Tribunal that the claimant is no longer actively pursuing his claim; and

- 5 (3) Further, and in any event, the Tribunal having identified from the public record at Companies House that the respondents as his former employer, as a limited company, were dissolved on 28 June 2017, during the currency of these Tribunal proceedings and, as such, that the respondents no longer exist, this claim before the Tribunal is dismissed for that reason too.

REASONS

10 **Introduction**

- 1 This case called before me on the afternoon of Friday, 6 April 2018, at 2.00pm, for an assigned Final Hearing, before an Employment Judge sitting alone, further to Notice of Claim and Notice of Final Hearing issued to both parties by the Tribunal on 23 January 2018.

- 15 2 One hour had been set aside for this Final Hearing, which was assigned to hear the evidence and decide the claim, including any preliminary issues. The claim, originally presented on 26 January 2015, had previously been dismissed by the Tribunal for the claimant's failure to pay a Tribunal fee or present a valid application for help with fees.

20 **Reinstated Claim**

- 3 Following the Supreme Court's Judgment in **R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51**, decided on 26 July 2017, by letter from the Tribunal, dated 24 November 2017, the claimant was written to, and asked to confirm whether, because of the Supreme Court Judgment, 25 he wished to apply for his claim to be reinstated.

4 By application, dated 15 December 2017, the claimant intimated that he
wished to have his claim reinstated, and following consideration of that
application, received by the Glasgow Tribunal office on 18 December 2017,
the claim was served, of new, on the respondents, at the address provided by
5 the claimant in the original ET1 claim form.

No Response to Claim, and Requests for Additional Information

5 No ET3 response was lodged by, or on behalf of, the respondents by the due
date of 20 February 2018. In those circumstances, the case was considered
by Employment Judge Lucy Wiseman, and, by letter dated 26 February 2018,
10 the Tribunal advised the claimant that, no response to his claim having been
received, it was therefore possible to issue a Judgment without the need for
a Hearing.

6 However, Employment Judge Wiseman considered that there was insufficient
information to issue a Judgment at that stage, and therefore she required the
15 claimant to provide information, within seven days, to allow a Judgment to be
issued.

7 Thereafter, the claimant was in e-mail communication with the Glasgow
Tribunal office. By e-mail sent on 27 February 2018, he advised that the
respondents owed him one month's wage, as he was working 60 hours a
20 week, Monday to Friday, at £7.50 per hour, and he stated that they also took
money off two wages to pay for a uniform that he never got, and at a ***“rough
guess”***, he stated that they owed him ***“around £1,500 to £1,600”***.

8 As his originally presented ET1 claim form had stated that he was also
claiming for notice pay, and holiday pay, by letter from the Tribunal, dated 6
25 March 2018, Employment Judge Susan Walker directed the claimant to
confirm if there was a separate claim for those matters and, if so, how much
for each. There being no reply from the claimant, by further letter from the
Tribunal, dated 27 March 2018, issued on instructions by Employment Judge
Jane Garvie, the claimant was asked to confirm and to reply by 3 April 2018.

- 9 In response to that letter from the Tribunal dated 27 March 2018, the claimant
e-mailed the Tribunal, on 28 March 2018, stating that he was owed “**roughly**
£1,500” in unpaid wages by the respondents, and he was also owed money
for two uniforms that was deducted from wages, but he never got any uniform.
- 5 Following consideration by Employment Judge Garvie, a further letter was
sent to the claimant by the Tribunal, on 4 April 2018, requesting him to clarify
if there was a separate claim for notice pay and holiday pay, and to provide
an exact breakdown for each, and to do so by 5 April 2018.
- 10 In response to the Tribunal’s letter of 4 April 2018, the claimant sent two e-
10 mails, one at 16:18 and the other at 16:25. In the former, he confirmed that
there is no holiday pay involved, as he only worked for the company for about
two months, and he stated that the company paid him the first month, then
refused to pay his wages the second month.
- 11 In the second e-mail, sent at 16:25, the claimant stated that he started with
15 Swc Security in the September, he worked two weeks in September, the full
month of October and the first week of November 2014; he was paid for the
two weeks in September, and the money he is claiming is for the month of
October and the week in November. He further stated that he was working
60 hours a week, 12 hour shifts Monday to Friday, and the man he spoke to
20 repeatedly was called Giles, and it was him who told him that he was not
getting paid for his work with the company.
- 12 Following referral of the claimant’s correspondence of 4 April 2018 to
Employment Judge Garvie, on 5 April 2018, she instructed that the case
proceed to the listed Final Hearing on 6 April 2018, but it was not appropriate
25 to cancel that Hearing, and not appropriate to issue a Default Judgment under
Rule 21 of the Employment Tribunal Rules of Procedure 2013.

Final Hearing before this Tribunal

13 When the case called before me, as an Employment Judge sitting alone, for the assigned Final Hearing, the claimant was not in attendance, nor represented.

14 On the Tribunal's behalf, the Clerk to the Tribunal telephoned the claimant at
5 his mobile and landline telephone numbers, given on the ET1 claim form as being where he stated he could be contacted during day time, but the Clerk reported that the claimant's mobile phone gave an automatic reply that the call could not be connected, and while there was an answer at his landline, the female who answered simply stated that the claimant was not in, and no
10 further information was provided.

15 The respondents, not having lodged any response resisting the claim, were not present or represented. On my instructions, a check of the Companies House website was undertaken, as it appeared from the claimant's correspondence of 4 April 2018 that the respondents may have been a limited
15 company. It was then discovered that, in fact, the limited company known as Swc Security & Training Limited (Company Number 08457547) had been dissolved on 28 June 2017.

16 Having waited until around 2.15pm, and there still being no contact from the claimant, and no attendance by him, nor any representative on his behalf, the
20 Tribunal proceeded in the claimant's absence.

Claim dismissed and struck out for not being actively pursued by the Claimant

17 In the circumstances, I decided that it was appropriate to dismiss the claim, in terms of **Rule 47**, and also to strike it out in terms of **Rule 37(1) (d)**, on the basis that it has not been actively pursued by the claimant, in the sense that
25 the claimant failed to appear, without any proper explanation, or to be represented at this Hearing, and that despite his correspondence up to and including 4 April 2018, suggesting that he was insisting in his claim. The circumstances were such that I inferred that the claimant no longer insisted in his claim and that he had, in effect, abandoned it.

18 I would observe that this *laissez faire* approach by the claimant is not, in my
view, consistent with a claimant promptly and diligently attending to
prosecution of a claim presented to the Employment Tribunal. His failure to
appear, or to be represented at this Hearing, is a further indicator that he is
5 not actively pursuing his claim.

19 While the Employment Tribunal process is informal, it is nonetheless a judicial
process and parties should, in pursuit of proceedings raised before the
Tribunal, either attend, or be represented, or if the matter is to be abandoned
or withdrawn, take pro-active steps to advise the Tribunal of their position at
10 the earliest opportunity.

20 In such circumstances, a claim can be dismissed, or withdrawn, as
circumstances may require, and the Tribunal diary re-arranged, if time
permits, to allow for other cases requiring judicial attention to be heard, and
unnecessary previously scheduled Hearings cancelled.

15 21 However, in the present case, by the claimant's failure to attend or be
represented, and by his failure to communicate in advance with the Tribunal
office to advise that he would not be attending, given his recent e-mail
exchange with the Tribunal office, the Tribunal has quite understandably
proceeded on the basis that the one hour Final Hearing allocated to this claim
20 would proceed.

22 In the event, by the claimant's failure to attend, or be represented, the one
hour allocated for the Hearing, that had been set aside in the Tribunal's diary,
has been unnecessary, and, as such, other users of the Tribunal system who
await a Hearing have been deprived of that opportunity at this sitting of the
25 Tribunal.

Claim dismissed on account of the Respondents being a dissolved Company

23 In any event, as detailed above, a search of the online Companies House
website disclosed that the respondents have been dissolved and, as such,
the practical difficulty for the claimant (even if he had attended, and even if he
had been in a position to clarify and prove, on balance of probability, the actual
5 amounts being sought, and to explain, with vouching documents, how he had
calculated those amounts) is that the public record shows that his former
employer was dissolved and, given that the limited company employer no
longer exists, the claimant can no longer sue that respondent.

24 In these circumstances, as they have emerged at this Hearing, it is
10 appropriate that this claim before the Tribunal is dismissed, on account of the
respondents being a dissolved company. This means that the claim cannot
proceed as there is no legal entity in existence against whom it can be
pursued, unless the dissolved Company is restored to the Register of
Companies, following successful application by the claimant to Companies
15 House.

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Employment Judge: I McPherson
Date of Judgment: 11 April 2018
Entered in register: 18 April 2018
and copied to parties

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