

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101678/2017 Preliminary Hearing at Glasgow on 3 October 2017 and
13 February 2018

Employment Judge: M A Macleod (sitting alone)

Ben Pierson

Claimant
Represented by
Ms J Barnett
(3 October 2017)

Saltire Facilities Management Limited

Respondent
Represented by
Ms A Mulholland

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim is dismissed following his, and his representative's, failure to appear at the continued Preliminary Hearing on 13 February 2018.

REASONS

1. A Preliminary Hearing was fixed to take place on 3 October 2017 in order to determine the claimant's employment status during his engagement with the respondent. That hearing was adjourned on the application of the claimant's representative in order to consider a number of matters which had arisen during the course of the hearing, notwithstanding the opposition of the respondent to that application.
2. A further two day diet of Preliminary Hearing was fixed to take place on 13 February 2018.

3. On 27 January 2018, the claimant's representative made an application to postpone the hearing fixed for 13 and 14 February on the basis that she was instructed in another hearing due to proceed in the Glasgow Employment Tribunal on the same dates. That application was opposed,
5 and by email of 8 February 2018, a letter was issued to the parties by the Employment Tribunal confirming that the application for postponement was refused.

4. On 13 February, the respondent appeared and was represented by Ms Mulholland, as before. No appearance was made on behalf of the
10 claimant, and the claimant himself did not attend. No explanation was given other than a brief conversation between Ms Barnett, who was in the Tribunal offices intending to appear in the competing hearing, and the Tribunal clerk, to the effect that she would not be appearing in this case.

5. There did appear to be a suggestion that the claimant's representative had
15 not received the email of 8 February confirming that her application for postponement had been refused, but reference to the file clarified that the email was sent to the address given by the claimant's representative in her ET1 and from which correspondence had been received by the Tribunal from her during the course of the proceedings.

- 20 6. On the application of the respondent, it being noted that the claimant had not attended nor was he represented, and that there was no prospect that an appearance would be made on his behalf in the circumstances, the Tribunal determined that the claim should be dismissed under Rule 47 of the Employment Tribunals Rules of Procedure 2013 on the basis of the non-
25 appearance of the claimant or his representative without good reason having been advanced, and taking into account all of the available information. The Tribunal was left to conclude that the claimant's representative, having found herself in a difficult position, had to choose between two hearings in which she was simultaneously instructed. Having
30 chosen the other hearing, she and her client must accept the consequences of her failure to attend at this hearing.

7. Ms Mulholland gave notice of the respondent's intention to apply for an order for expenses in respect of this hearing, and also in relation to the failure of the claimant's representative to attend at the telephone conference Preliminary Hearing which took place on 6 February 2018. I advised that I
5 would reserve consideration of such an application until it was intimated in writing, setting out the grounds upon which it is being made, to offer the claimant or his representative the opportunity to respond to that application.

8. The hearing was thereby concluded.

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Employment Judge: Murdo MacLeod
Date of Judgment: 13 February 2018
Entered in Register: 16 February 2018
15 **and Copied to Parties**