

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No S/4105424/17

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Held in Glasgow on 18 January 2018

Employment Judge: Ian McPherson

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Mr Steven White

**Claimant
Not Present
& Not Represented**

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St Mirren Car Parking Ltd

**Respondents
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

(1) The claimant having failed to appear, or to be represented, at this Preliminary Hearing, and the respondents having failed to lodge any ET3 response resisting the claim, the Tribunal, acting on its own initiative, in terms of **Rule 47 of the Employment Tribunals Rules of Procedure 2013**, having considered his non-attendance, and there being no explanation for it provided in advance to the Tribunal, and the Tribunal clerk having tried unsuccessfully to contact him by telephone, decided to dismiss his claim for his non-attendance at this Hearing;

(2) Further, and in any event, the Tribunal also decided, on account of the claimant's failure to comply with previous Orders and directions of the Tribunal, seeking additional information from him, and his failure to actively pursue his claim, to Strike Out his claim under **Rule 37(1)(c) and (d) of the Employment Tribunals Rules of Procedure 2013** ; and

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(3) Given there are other claims lodged at the Employment Tribunal against these respondents, the clerk to the Tribunal is instructed to copy this Judgment to the Registrar of Companies, Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh EH3 9FF, to show cause why the pending application to strike this company off the Register of Companies should be suspended, and the Registrar is invited to take such steps as might be required, in the public interest, to enquire into the actions of the company's directors, and whether they have given appropriate notice of their Strike Off application to the claimant and other claimants as creditors

REASONS

Introduction

1. Following ACAS early conciliation on 1 November 2017, by claim (form ET1) received at the Glasgow Tribunal Office on 1 November 2017, the claimant brought Tribunal proceedings against the respondents. He claims unfair dismissal, stated to be arising out of the termination of his employment as a Supervisor on 17 October 2017, following employment with the respondents stated to have started on 28 June 2017. He states that he was sacked for gross misconduct, with no investigation made and no chance to defend himself.

2. He also complains that he is owed arrears of pay. He seeks an award of compensation only from the respondents in the event that his claim is successful before the Tribunal. While no Schedule of Loss, or other explanation is provided in the ET1, and the ET1 provides no earnings details for the claimant's employment with the respondents, the claimant states there in his claim form that he seeks : "**Full payment of money owed £1315, 1 week notice pay £450, any holiday entitlement, and £1000 to see my family OK over Xmas.**"

3. The claim was accepted by the Tribunal, on 6 November 2017, and the clerk to the Tribunal entered the administrative jurisdictional codes of **WTR(AL), WA, UDL** and **PID**, for failure to pay holiday pay, unlawful deduction from wages, ordinary unfair dismissal, and dismissal or detriment for making a protected disclosure ("**whistleblowing**").
4. Further, on 6 November 2017, Notice of Claim and Notice of Case Management Preliminary Hearing was served on the respondents, requiring them to enter a response within 28 days (i.e. by 4 December 2017) if they resisted the claim, and both parties were provided with a Case Management Agenda form to complete and return, by 25 December 2017 for the claimant, and by 11 January 2018 for the respondents. Agendas were issued as the Tribunal clerk had registered the case as including a whistleblowing head of complaint.
5. No ET3 response was lodged by, or on behalf of the respondents, by the due date of 4 December 2017, or at all. No application has been made by the respondents for an extension of time under **Rule 20** to allow a late response. As such the claim proceeds as undefended before the Tribunal.

No Rule 21 Default Judgment issued by the Tribunal

6. Following referral to Employment Judge Lucy Wiseman, on 18 December 2017, no ET3 having been lodged, she directed that there was insufficient information in the ET1 claim form to issue a Judgment at that stage, without the need for a Hearing, and she required the claimant to provide information about a calculation for the money owed to him, including outstanding wages and holiday pay, within 7 days to allow Judgment to be issued.
7. No additional information was provided by the claimant within that 7 day period, or at all, despite Judge Wiseman's direction. On 17 January 2018, a reminder was issued by email to the claimant , for immediate return, after

Employment Judge Laura Doherty directed the claimant to reply in writing , but again no reply was forthcoming , despite that Judge's extension of time granted to the claimant.

5 **Preliminary Hearing before this Tribunal**

8. When the case called before this Tribunal, at 10.00am, on Thursday, 18 January 2018, the claimant was not in attendance, nor represented. He had not replied to the Tribunal's recent correspondence of 18 December 2017
10 and 17 January 2018. The respondents, not having lodged any ET3 response, were similarly not present, nor represented.

9. Having considered the claimant's non-attendance, and there being no explanation for it provided in advance to the Tribunal, and the Tribunal clerk
15 having tried unsuccessfully to contact him by telephone, at the telephone numbers provided on his ET1 claim form, I decided to wait 1/2 hour to see if he appeared. He did not. As such, I decided to dismiss his claim under **Rule 47.**

20 10. On my behalf, a search of the Companies House online register was conducted by a clerk to the Tribunal. That check showed the respondents, company number SC 523437, having their registered office at 307 West George Street, Glasgow, G2 4LF, the address given on the ET1 claim form, were shown as "**Active - Proposal to Strike Off.**" Further, the Registrar of
25 Companies has given notice, on 19 December 2017, that unless cause is shown to the contrary, at the expiration of 2 months, the respondents' name will be struck from the Register and the company will be dissolved.

30 11. In the absence of the claimant, at this Preliminary Hearing, I could not check with him whether he was aware of the pending application to Strike Off the company , and, if so, whether or not he had objected, as a creditor of the respondents. In these circumstances, while I have dismissed this claim,

5 given there are other pending claims against this company lodged at the Employment Tribunal, I have instructed the clerk to the Tribunal to intimate this Judgment to the Registrar of Companies. One of the unnamed "**2 men**" referred to by the claimant in the ET1 may well be the respondent company's director, Iain James Scanlon.

- 10 12. Had the claimant appeared at this Preliminary Hearing, I could have converted it into a Final Hearing, under **Rule 48**, and, subject to being satisfied as to the amounts (if any) due to him by way of arrears of pay, and holiday pay, I could have awarded him Judgment accordingly. However, I was not satisfied that, in the absence of the claimant, it was appropriate to issue a liability only Judgment for those heads of claim, leaving remedy to be determined at a later stage. To date, despite two opportunities provided to him by the Tribunal, the claimant has repeatedly failed to provide
15 necessary additional information, and that gives grounds for Strike Out of his claim, under **Rule 37**, in any event.

Discussion

- 20 13. Further, from the information provided in the ET1, the claimant does not appear to have the necessary, 2 years' continuous employment with the respondents (required under **Section 108**) to bring a complaint of ordinary unfair dismissal, contrary to **Sections 94 and 98 of the Employment Rights Act 1996**, nor does his claim form present any case of automatic
25 unfair dismissal by the respondents, whereby that qualifying service would not be required. As such, I was not satisfied that, in the absence of the claimant, it was appropriate to issue a liability only Judgment for that head of claim, when there was a preliminary issue of jurisdiction to be determined by the Tribunal.
- 30 14. I did note, from perusal of the case papers, that the claimant did, however, tick box 10, on the ET1 claim form, to state that his claim consists of, or includes, a claim that he had made a protected disclosure (otherwise known

as a "**whistleblowing claim**", under the Employment Rights Act 1996, and he wanted information passed to the relevant regulator.

- 5 15. At section 15, additional information, there is reference to the claimant having "**contacted action fraud and trading standards about what these 2 men are doing and conditions were expected to work in**", but there is no proper specification of what is being alluded to, nor who the 2 men referred to are. Although at section 3.1, the claimant had indicated on his ET1 claim form that he was aware of other claims against the same employer, arising from the same, or similar circumstances, and he named 9 other persons , his claim proceeds as a single claim, rather than a multiple linked to other related claims.
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- 15 16. Again, I was not satisfied that, in the absence of the claimant, it was appropriate to issue a liability only Judgment for that "**whistleblowing**" head of claim, when there was a preliminary issue of jurisdiction to be determined by the Tribunal, as to whether or not there was any such head of claim before the Tribunal.
- 20 17. In deciding to dismiss the claim, I had regard to the terms of Rule 47, which provide that if a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing ,in the absence of that party but, before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable about the reasons for the party's absence.
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- 30 18. In this particular case, I considered the terms of the claim form (ET1), and as the case was undefended, there was no respondents' response form (ET3). In the absence of the claimant, or a representative, and no communication from him, or anyone on his behalf, to the Tribunal Office, there was no motion by, or on the claimant's behalf, for a postponement to a later date, and there were no written representations from the claimant in respect of the issues before the Tribunal for consideration.

19. On account of the claimant's failure, without any proper explanation, to appear or be represented at this hearing, I inferred that the claimant no longer insisted in his claim, and that he has abandoned it. 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 be represented at this hearing, is a clear indicator that he is not actively pursuing his claim.
20. While the Employment Tribunal process is informal, it is nonetheless a judicial process. 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, whether on account of a settlement reached between the parties, or otherwise, take proactive steps to advise the Tribunal and other party of their position, at the earliest possible opportunity.
21. In such circumstances, the claim can be dismissed, or withdrawn, as circumstances may require, and the Tribunal's diary re-arranged, if time permits, to allow for other cases requiring judicial attention to be heard, and unnecessary previously scheduled hearings cancelled. By the claimant failing to communicate in advance with the Tribunal office, the Tribunal system has quite understandably proceeded on the basis that the hearing allocated to this claim would proceed.
22. In the event, by the claimant's failure to attend or be represented, these proceedings were concluded by 10.30am, when one hour had been set aside, as previously advised to both parties when the Notice of Hearing was issued. As such, other users of the Tribunal system who await a hearing have been deprived of that opportunity at this sitting of the Tribunal

Disposal

23. Subject to the claimant's right to seek a reconsideration of this judgment, in the interests of justice, under **Rules 70 and 71 of the Employment Tribunal Rules of Procedure 2013**, within 14 days of the issue of this Judgment to parties, these proceedings are dismissed by the Tribunal for the reasons detailed above.

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15 **Employment Judge: G I McPherson**
Date of Judgment: 30 January 2018
Entered in register: 08 February 2018
and copied to parties

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