



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102303/2017

5

Held in Glasgow on 8 January 2019

10

**Employment Judge: Lucy Wiseman
Members: Foster Evans
Alex MacMillan**

Mr Jamie Simpson

**Claimant
No attendance**

15

HM Revenue and Customs

**Respondents
Represented by:
Ms P Macaulay -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to dismiss the claim.

REASONS

25

1. The claimant presented a claim to the Employment Tribunal on the 3 August 2017 alleging he had been unfairly dismissed and discriminated against because of disability.

30

2. The respondent entered a response admitting the claimant had been dismissed for reason of conduct but denying the dismissal had been unfair. The respondent further denied the allegations of discrimination.

35

3. The case was case managed at hearings on the 12 October 2017 and 9 November 2017; and a preliminary hearing took place on the 17 July 2018 to determine whether the complaint that he had suffered unlawful discrimination on the grounds of disability when the respondent recommended him for

E.T. Z4 (WR)

dismissal on the 27 July 2016 was timebarred. A Judgment dated 16 August 2018 decided that aspect of the claim was timebarred.

4. Date listing letters were sent to the parties on the 13 September, and following
5 responses from both parties, the case was listed for a 3 day hearing. The parties were notified by letter dated 18 October 2018 of the dates for the Hearing.
5. The claimant did not attend for the Hearing today. The clerk telephoned and
10 was informed he had not received notice of the Hearing and was unable to attend today.
6. Ms Macaulay invited the tribunal, in terms of rule 47 of the Employment
15 Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the Tribunal Rules) to dismiss the claim. Ms Macaulay noted the claimant's position was that he had not received the notice of hearing, but she doubted that position in circumstances where the respondent had received the notice.
7. Ms Macaulay also referred the tribunal to various emails which had been sent
20 to the claimant regarding preparations for the Hearing, and which had referred to the dates of the Hearing. In an email to the tribunal, which was copied to the claimant, dated 4 December 2018 there was reference to the hearing starting on Tuesday 8 January (in bold). A further email had been sent to the claimant on the 11 December which made reference to the respondent
25 leading in this case, and to their witnesses being called to give evidence on the 8th and 9th January. In a further email dated 19 December, the respondent's documents had been sent to the claimant.
8. Ms Macaulay had sought an Order for additional information from the tribunal,
30 regarding the remedy sought by the claimant and mitigation. This order had been issued on the 27 December but the claimant had not responded to it.
9. Ms Macaulay had not heard anything from the claimant since the date of the preliminary hearing on the 17 July 2018.

Decision

10. We decided to dismiss the claim in terms of rule 47 of the Tribunal Rules. We made that decision after having had regard to the following points:

- 5 • the notice of hearing was sent to both parties on the 18 October 2018. The case was listed after date listing letters had been completed and returned by both parties. We considered that even if the claimant had not received the notice of hearing, it was reasonable to expect him to have taken some action (in the following months) to enquire when his
10 hearing may be.

- The emails from Ms Macaulay make mention of the dates for the hearing. There was nothing to suggest the email address confirmed by the claimant on the ET1, and subsequently used by him, had changed.
15 We were accordingly satisfied that even if he had not received the formal notice of hearing sent by the tribunal, he would have been put on notice regarding the dates of the hearing by Ms Macaulay's emails.

- The claimant's response to the clerk this morning was insufficient. He
20 stated he could not attend today, but gave no hint whether he could have attended tomorrow or Thursday. There was also no enquiry about what would happen if he did not attend, or whether the case could be postponed to another day.

- The tribunal and the respondent's representative have not had any communication with the claimant since the preliminary hearing on the 17 July 2018.

5 11. The claim is dismissed

10 **Employment Judge: Lucy Wiseman**
Date of Judgment: 08 January 2019
Entered in register: 09 January 2019
and copied to parties

15