



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4104951/2018

Hearing Held at Dundee on 28 May 2019

Employment Judge McFatridge

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Mr L Attenborough

**Claimant
No appearance,
no representation**

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Envirokleen (Scotland) Ltd

**Respondents
Represented by:
Mrs B Wilson &
Mr D Wilson
Directors**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim be dismissed.

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REASONS

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1. The claimant submitted a claim to the Tribunal in which he claimed that he was due various sums following the termination of his employment. He also claimed that the respondents had failed to provide him with a statement of terms and conditions of employment. No response was lodged within the statutory period and a Rule 21 judgment was issued on 17 July 2018. The

respondents then sought to lodge an ET3 response late and to have the Rule 21 judgment reconsidered. A hearing was fixed to deal with the application for reconsideration however for various reasons this did not take place until 27 February. The parties were advised that the hearing on that date would deal with reconsideration and then go on to determine the case. The respondents attended on that date but the claimant did not. The Employment Judge dealt with the reconsideration of the Rule 21 judgment but did not feel that it was appropriate to continue to deal with the case in the absence of the claimant. As a result the default judgment issued on 17 July 2018 was set aside. A hearing was fixed to take place on 28 May 2019 in order to deal with the claim. At the time fixed for the hearing the respondents were in attendance and ready to proceed. The claimant was not. The Tribunal office telephoned the claimant at approximately 10:00 am to ask if he was intending to be at the hearing. The claimant answered his telephone and indicated that he was "on his way". There was no appearance by the claimant by 10:25. At that point the Tribunal clerk telephoned the claimant again. The telephone was not answered and went straight to voice mail.

2. In the circumstances I convened the hearing at 10:35. The respondents sought dismissal. They confirmed that, as previously stated, they had now paid the claimant the sums they considered to be due.
3. In terms of Rule 47 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 the party. Before doing so the Tribunal is required to consider any information which is available to it after any enquiries that may be practicable about the reasons for the party's absence.
4. In this case I had absolutely no information before me as to the reason for the claimant's absence. The clerk had been in telephone contact with the claimant at approximately 10:00 am when the claimant had had every opportunity to say why he would not be in attendance. All he had said was that he was on his way but this was quite clearly not the case. I also bore in mind that this was the second occasion when the claimant had failed to

attend a hearing without giving any reason for his non-attendance. In the circumstances I considered that it was appropriate to simply dismiss the case in accordance with the respondents' application.

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25 **Employment Judge:
Date of Judgment:
Entered in register:
and copied to parties**

**Ian McFatridge
28 May 2019
29 May 2019**