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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4112577/2018

Held in Glasgow on 17 October 2018

Employment Judge: Ian McPherson

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Miss Jade Haddow

**Claimant
Not Present and
Not Represented**

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Premier Convenience Ltd

**Respondents
Represented by:-
Mr Mohammed Farhan (Director)
and Mr Shabaz Ahmed (Manager)**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

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- (1) The case having called for Case Management Preliminary Hearing, and the claimant not being in attendance or represented, but the respondents being present and represented, and continuing to defend the claim, the Hearing proceeded in the absence of the claimant, the

E.T. Z4 (WR)

Tribunal taking into account, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, available information from the claimant, and the respondents' representatives.

5 (2) On the information available to the Tribunal, having considered the ET1 claim form, and the ET3 response, the claimant does not have qualifying service of two years' continuous employment with the respondents, as required by **Section 108 of the Employment Rights Act 1996**, and, accordingly the Tribunal **dismissed** her complaint of ordinary unfair dismissal for lack of jurisdiction to deal with it, and the claimant not
10 having provided any additional information to the Tribunal, after issue of the Tribunal's letters of 22, 25 and 29 August 2018, to suggest she had an unfair dismissal complaint not requiring that continuity of employment, that part of her claim is dismissed.

15 (3) Further, on account of the claimant's failure to attend or be represented at this Hearing, the Tribunal takes the view that she is not actively pursuing her claim in respect of her other complaints of being owed notice pay, holiday pay, and other payments, and so, in terms of **Rule 37 of the Employment Tribunal Rules of Procedure 2013**, had it not
20 dismissed her claim for her failure to appear or be represented at this Hearing, the Tribunal would have considered striking it out for her failure to actively pursue her claim.

25 (4) Subject to the claimant's right to seek a reconsideration of this Judgment, in the interests of justice, in terms of **Rules 70 to 72 of the Employment Tribunal Rules of Procedure 2013**, by this dismissal Judgment these proceedings are at an end, subject only to determination of the respondents' application, made orally at this Hearing, for a Preparation Time Order to be made, and the sum of **£228** awarded to the respondents.

30 (5) Further procedure on that application for a Preparation Time Order will be determined by Employment Judge Ian McPherson after the expiry of 14 days from date of issue of this Judgment.

- 5 (6) The Tribunal **orders** that, **within 14 days of issue of this Judgment,** the claimant shall submit to the Tribunal office a written reply to the respondents' application, making any comment or objection that the claimant feels appropriate, addressing her grounds of resistance to the respondents' application for a Preparation Time Order, and addressing the claimant's ability to pay any such award , if ordered by the Tribunal, and lodge her reply with the Tribunal office (by e-mail, with attached Word document, not PDF) copying her reply to the respondents' representative , by e-mail, at that time, for any comment or objection that the respondents feel appropriate, addressing the claimant's reply, **within 7 days of their receipt of the claimant's reply.**
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- 15 (7) Subject to written comments from both parties, the Tribunal notes and records that, if the respondents' application for expenses is opposed by the claimant, then it is the Tribunal's provisional view that the opposed application for expenses shall be dealt with by Employment Judge McPherson alone, in chambers, on the papers, having regards to parties' written representations, and that an Expenses Hearing in public before a Tribunal would not be necessary, having regard to the Tribunal's overriding objective, under **Rule 2 of the Employment Tribunal Rules of Procedure 2013,** to deal with the case fairly and justly, including the avoidance of delay, and the saving of expense, to both parties, and to the Tribunal.
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REASONS

25 **Introduction**

- 1 This case called before me on the afternoon of Wednesday, 17 October 2018, at 2.00pm, for a Case Management Preliminary Hearing assigned by Employment Judge Lucy Wiseman, on 25 August 2018, as per the Tribunal's letter of that date to both parties, and the arrangements for this one hour Preliminary Hearing before an Employment Judge sitting alone were sent to
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both parties under cover of a further letter from the Tribunal dated 29 August 2018.

Preliminary Hearing before this Tribunal

2 When the case called at 2.00pm, the respondents were in attendance,
5 represented by Mr Farhan (Director) and Mr Ahmed (Manager). Mr Farhan advised that, under his known name of Farhan Rana, he had lodged the respondents' ET3 response resisting the claim.

3 In the absence of the claimant, I had the clerk to the Tribunal telephone the claimant at the telephone number provided in her ET1 claim form, as being
10 where she could be contacted during the day. The clerk advised that his message went straight to voicemail, and while he asked for the claimant to return the call, within 15 minutes, no return call was made to the Tribunal, nor was there any communication from the claimant to indicate why she was
15 unable to attend this listed Hearing, given that she had been given Notice of it, as also the respondents, under cover of the Tribunal's letters of 25 and 29 August 2018.

4 In the circumstances, the respondents being present, and represented, and ready to proceed, I invited submissions from them as to the appropriate method of disposal of this case, given the claimant was not in attendance.
20 Taking account of the information available to the Tribunal, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, there was nothing from the claimant to indicate that she was withdrawing this claim, nor that it had been settled, nor to explain why she was not in attendance, nor represented.

25 5 In answer to my enquiry, the respondents' representatives advised that while they accepted that the claimant was due the sum of £87.61, if she returned her uniform to them, she had not yet returned her uniform to them, so they had not yet paid her any sum due. Further, I was advised, they had received no communication from the claimant since her ET1 claim for was presented

to the Tribunal, nor after their ET3 response was intimated to her by the Tribunal on 22 August 2018.

6 The respondents' representatives advised that their business continues to
trade and, while Employment Judge Wiseman had put the case out for this
5 Case Management Preliminary Hearing to clarify the complaints being
pursued by the claimant, in circumstances where she did not appear to have
qualifying service to bring a claim of ordinary unfair dismissal (contrary to
Section 98 of the Employment Rights Act 1996), and it was not clear
whether she was bringing a complaint of disability discrimination, they advised
10 that they had not read the ET1 claim form as suggesting that the claimant had
been unfairly treated by the respondents on account of any disability.

7 I was advised that there was no sign of any disability impacting on the
claimant, nor had the respondents received any medical proof given to them
as employer, while she was employed by them. Further, it was of note, that
15 in completing her ET1 claim form, at Section 8.1, while the claimant had ticked
that she was bringing a complaint of unfair dismissal, and for various other
payments, she had made no ticks against the various forms of unlawful
discrimination listed, including discrimination on the grounds of disability.
Further, at Section 12 of her ET1 claim form, the claimant, in answer to the
20 question of whether she had a disability, had answered in the negative.

8 In all the circumstances, while I considered it appropriate, on account of the
claimant's failure to appear, or be represented, that she was failing to actively
pursue her claim, and so it should be dismissed, in terms of **Rule 47**, I also
took the view, based on the information available to the Tribunal, that she had
25 no qualifying service to bring a complaint of ordinary unfair dismissal, and that
it was appropriate to dismiss that part of her claim, and that her ET1 claim
form did not disclose any complaint of any unlawful discrimination, on the
grounds of any protected characteristic, including disability. Having delivered
my oral Judgment to that effect, I advised the respondents' representatives
30 that the claimant would have **14 days** from the date of issue of this Judgment,
to apply to the Tribunal for a Reconsideration, in the interests of justice, and/or

42 days from date of issue of this Judgment, to intimate any appeal on a question of law to the Employment Appeal Tribunal.

Respondents' application for Preparation Time Order

9 The respondents' representatives then raised with me the fact that they were
5 disappointed that the claimant had not turned up, and that they thought she
had done this to put them at a disadvantage, given they had had 1 hour, 40
minute journey up from Dumfries, by car, and they had had to make
arrangements for somebody else to be running their business, causing
10 disruption to them, and on cost to their business, and they described the
claimant's behaviour in this regard as being very unreasonable.

10 I referred them to the power in terms of the Tribunal's Rules of Procedure
which allow for a Tribunal to make an award of expenses or, in the case of
parties not legally represented, a Preparation Time Order, in favour of one
party, if the Tribunal is satisfied that the other party has, in some way, brought
15 or conducted the proceedings in a manner where that other party has acted
vexatiously, abusively, disruptively or otherwise unreasonably in the bringing
of the proceedings or the way that the proceedings have been conducted, or
that a claim has had no reasonable prospect of success.

11 While **Rule 76** describes the circumstances in which a Preparation Time
20 Order might be made by the Tribunal, **Rule 77** provides that no such Order
may be made unless the paying party, against whom such an Order is sought,
has had a reasonable opportunity to make representations (in writing or at a
Hearing, as the Tribunal may order) in response to the application.

12 In terms of **Rule 79**, the Tribunal must decide the number of hours in respect
25 of which a Preparation Time Order should be made, on the basis of
information provided by the receiving party on time spent falling within **Rule**
75(2), and the Tribunal's own assessment of what it considers to be a
reasonable and proportionate amount of time to spend on such preparatory
work, with reference to such matters as the complexity of the proceedings,
30 the number of witnesses and documentation required. The amount of

Preparation Time Order shall be the product of the number of hours assessed by the Tribunal, and the hourly rate (currently £38 per hour).

13 The respondents' representatives stated that they wished to make an application for a Preparation Time Order against the claimant. I was advised
5 that they had spent maybe two days, over one week, in preparing the respondents' ET3 response, in gathering documents, and preparing the ET3 response, and that that had taken them at least 6 hours preparation time. As such, they invited the Tribunal to consider making a Preparation Time Order against the claimant in the total sum of £228 (being 6 hours, at £38 per hour).

10 14 Having heard their application, I advised the respondent's representatives that I would incorporate the terms of their oral application into this written Judgment and Reasons, and give the claimant **14 days**, from date of issue of this Judgment, for her to make any representations to the Tribunal in respect of the respondents' application for an award of £228 against her. In fixing the
15 period of **14 days**, I did so because it is the same period as would be available to the claimant to seek a Reconsideration of the Judgment, in the interests of justice, in terms of **Rules 70 to 72.**

Further Procedure

15 As presently advised, I am minded that, if the claimant objects to the
20 application for a Preparation Time Order, matters can be dealt with by way of written representations from both parties, and without the need for an Expenses Hearing.

16 If the claimant objects to the making of such an Order, she should clarify
25 whether she wishes to make written representations only, or whether she seeks a Hearing. In that event, if the respondents' application is opposed, the Tribunal will offer the respondents an opportunity to make written representations, before any further procedure is determined by the Tribunal.

17 Employment Judge McPherson has reserved consideration of any such
30 application for a Preparation Time Order to himself, so as to ensure judicial continuity in dealing with this case.

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Employment Judge: I McPherson
Date of Judgment: 19 October 2018
Entered in register: 12 November 2018
and copied to parties

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