



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107089/2019

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Held in Glasgow on 7 November 2019

Employment Judge R Gall

10 **Mr A Buchanan**

**Claimant  
Not present and  
Not represented**

15 **Gallagher Scotland Limited**

**Respondent  
Not present and  
Not represented**

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Tribunal is that the claim is dismissed in terms of Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

### REASONS

1. This was a claim brought in respect of wages said to be due to the claimant by the respondents. The claim was resisted. Each party had acted on their own behalf in completion of the claim form and response. At the date  
25 scheduled for the hearing, 7 November 2019, each party remained unrepresented.

2. A hearing in the case was set down for 14 August 2019. On that morning, the Tribunal received an email from the claimant stating that due to a medical  
30 issue he required to obtain an emergency doctor's appointment. He said that he was not in a fit condition to "*give myself a fair defence*". He sought the chance to present his case.

3. On the morning of 14 August 2019, the respondents also sent an email to the Tribunal. They set out that their director, Mr Gallagher, was unable to attend the hearing due to “*unforeseen circumstances*”. The email went on to say that the respondents would “*accept the Judge’s ruling on the written response*”  
5 and apologised for the inconvenience due to non-attendance.
4. The Employment Judge who was scheduled to hear the case on 14 August considered it to be in keeping with the overriding objective for the hearing to be discharged and relisted. He said that “*it appeared to the Tribunal that the claim turned on a sharp dispute on facts about the hourly rate agreed to be*  
10 *paid to the claimant which would not be determined without parties attending a hearing to give evidence on this point*”.
5. A letter in those terms was sent to both parties on 14 August 2019. It was also stated that dates when parties were unavailable in October November and December should be supplied to the Tribunal on the basis that the Tribunal  
15 would endeavour to list the rescheduled hearing taking account of those dates.
6. The letter stated that a reply should be received by 26 August. No reply was received to that letter.
7. A date was then fixed for the hearing in the case. The hearing notice  
20 confirming that date was sent to parties on 6 September 2019. The date fixed was 7 November 2019 at 10 AM. The letter intimating the final hearing stated in paragraph 4 that unless there were “*wholly exceptional circumstances*” no application for postponement would be granted. It was also stated that if postponement was applied for the full grounds were to be supplied together  
25 with any dates when the party seeking a postponement was unavailable in the 6 weeks following the hearing date.
8. No communication was received from either party in relation to the case between 6 September 2019 and 7 November 2019.
9. On the morning of 7 November 2019, the Tribunal received an email from the  
30 claimant. The email read: –

*“Good morning,*

*I have not been able to get the day off work today as a lot of people are off today and I don't want to risk being dismissed on the run up to Christmas. I hope that we can fix a further date for this case.”*

- 5 10. There was no appearance by or on behalf of the claimant.
11. There was also no appearance by or on behalf of the respondents at 10 AM on 7 November. That continued to be the position at 10:10 AM. The Clerk to the Tribunals telephoned the number provided by the respondents to ascertain whether they intended to appear to at the hearing. The person to whom the Clerk spoke said that they would attempt to contact Mr Gallagher as he was not in the office. She confirmed that she was aware of the case. She telephoned the Clerk a few minutes later to confirm that she had tried to contact Mr Gallagher but that there was no reply on his mobile phone and he did not have a voicemail facility.
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12. I considered the position which had emerged. In particular I was mindful that there had been an earlier postponement in this case. Although no medical evidence was provided by the claimant supporting the position set out in his email of 14 August, postponement had, understandably, been granted in the circumstances detailed.
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13. The hearing had been set down for 7 November after the opportunity being given to confirm unsuitable dates. No reply was received in response to that request.
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14. I was conscious of the terms of Rule 47 which provide that if a party fails to attend or to be represented at the hearing the Tribunal may dismiss the claim. That Rule goes on to say that before so doing, the Tribunal is to 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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15. I was also mindful of the Presidential Guidance on seeking the Postponement of a Hearing, that Guidance being issued effective from 1 February 2014.

16. In paragraph 4.2 of the Presidential Guidance it is set out that one of the factors which an Employment Judge will take into account is whether parties were consulted about the dates of the hearing in advance of it being fixed and if so whether the alternative commitment, the example given being a holiday, was known about at the time the date consultation took place. The comment is made that parties are generally expected to give Tribunal hearing priority over most other matters.
17. I also had regard to the terms of the overriding objective under the Rules. If I was to postpone the hearing I would require to be satisfied that so doing was in accordance with the overriding objective to deal with cases fairly and justly.
18. I kept in mind that neither party had appeared for the original hearing and that hearing had then been postponed. This is therefore the second hearing set down. The claimant had ample notice of the hearing. It is only on the morning of the hearing that he indicates that he has not been able to get the day off work, as he puts it. He would have been able however to make the approach seeking a day of leave shortly after 6 September when the letter intimating the date was sent to him. He had therefore just under 2 months in which to make arrangements to be absent on 7 November. He does not set out any attempts made to obtain leave at an earlier point. It is not for example said that he approached his employer in the second week in September and either had not heard or had been promised the day off with that promise then being cast aside.
19. If, of course, the claimant had applied for a day of leave on 7 November and had made that request around mid-September and it had been turned down, he could have come to the Tribunal at that point explaining the position and seeking a postponement. No such contact was made with the Tribunal.
20. In weighing up whether to postpone the hearing and relist the case, I had regard to the fact that not doing so would mean that the claim was dismissed. I say that as it is not possible to determine the position from the claim and response. There is, as my colleague put it, a "*sharp dispute*" on the facts.

21. Ultimately it is for the claimant to pursue his claim. It is for him to explain why it is not possible for him to attend in a manner which meets the tone set in the Presidential Guidance and which persuades the Employment Judge considering the matter that it is consistent with the overriding objective to postpone the case and to relist it.

22. As stated, there is already been a postponement in this case. Advantage was not taken of the consultation period to provide unsuitable dates. No intimation was made after 6 September, when the date was made known to the claimant, that 7 November was unsuitable to him due to work any other commitment. It seemed to me that the explanation for the application put forward did not constitute "*wholly exceptional circumstances*".

23. Although I appreciate that the claim will come to an end due to this step being taken, I do not see it consistent with the overriding objective that, in the circumstances which pertained as narrated above, the hearing is postponed and relisted. I therefore dismiss the claim. I realise that the respondents also did not appear. Had the claimant appeared therefore it might have been, in the absence of challenge to his evidence, his evidence as to the hourly rate agreed being as he stated in this claim form was accepted and that his claim was successful. He was not however present at the hearing and the evidence in favour of his claim and against it cannot be assessed and the success or otherwise of his claim determined.

24. In the circumstances set out in for the reasons mentioned, the claim is dismissed.

25 Employment Judge: R Gall  
Date of Judgement: 07 November 2019

Entered in Register,  
Copied to Parties: 08 November 2019

