



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4123595/2018

Held in Glasgow on 7 January 2020

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Employment Judge: R McPherson

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Mr L McGrory

Claimant
No appearance

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Kibble Education and Care Centre

Respondent
Represented by
D Gorry
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that the claimant's claims for unfair dismissal are dismissed.

REASONS

Introduction

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Preliminary Procedure

1. The claimant presented a claim for unfair dismissal. The claim is resisted by the respondent it being contended that the claimant was fairly dismissed. The respondent in addition argued that the claim was not presented in time.

E.T. Z4 (WR)

2. The Note of Preliminary Hearing of 13 March 2019 at which the claimant was represented by a friend, issued to the parties set out in some detail that there was a preliminary issue in relation to time bar.
- 5 3. The Tribunal issued letter dated 1 November 2019 to the claimant at his address, notifying him of the Preliminary Hearing appointed to take place today Tuesday 7 January 2020 at 10 am. That letter of 1st November was issued to both parties set that they would be responsible to for making sure
10 any witnesses they wished to call could attend and that they should ensure that he brought with him documents (and copies) of all documents on which they wished to rely.
4. Today's Preliminary Hearing was appointed to afford the claimant the
15 opportunity to provide such additional information and documents as he may wish to rely upon to seek to argue for a possible extension of the relevant time limit.
5. The respondents had prepared for this hearing and attended, following
20 receipt of the letter of 1 November 2019. The respondent's representative identified that he had sought to make contact with the claimant on or about 27 December 2019 in order to establish whether the claimant had wished, at that stage, to provide any documents in support of his position, but had received no response.
- 25 6. The claimant did not attend. On the morning of this hearing, the Tribunal Clerk made unsuccessful attempts to contact the Claimant to determine his intentions. The Claimant has given no prior indication to the Tribunal that he was not intending to attend the Hearing or had any valid reason for not
30 attending.
7. In light of these developments, the Respondent applied for dismissal of the claim in terms of Rule 47 of the Employment Tribunals Rules of Procedure 2013.

Relevant Law

8. Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, (the Tribunal Rules) (the 2013 Rules) Rule 47 provides as follows:

5 *47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. 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 parties' absence.*

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Discussion and Decision

9. I considered all of the information which was available to me. Such enquiries as were practicable were made, including the Tribunal's clerk seeking to seeking to make contact with the claimant by telephone on the mobile telephone number provided by the claimant, however there was no answer.

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10. The Tribunal had written to the claimant, at the address provided by the claimant, on 1 November 2019.

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11. If there is a valid explanation for non-attendance, it would be open to him to apply within 14 days for reconsideration of this decision.

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12. The respondents through their representative attended the hearing today and had prepared to set out their position that the claim was lodged out of time, gave consideration to seeking a costs order against the claimant under rule 76 (1) of the 2013 Rules which provides that a Tribunal may make a costs order "*where it considers that a party has acted vexatiously... or otherwise unreasonably in either the bringing of proceedings... or the way that the proceedings...have been conducted*" however the respondents did not seek to insist on such a costs order, at this time.

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13. I am of the view that a dismissal of the claim is appropriate in these circumstances and in accordance with the overriding objective in terms of Rule 2 of the 2013 Rules to deal with cases fairly and justly.

Conclusion

14. The claimants' claim for unfair dismissal is hereby dismissed.

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Employment Judge:

R McPherson

Date of Judgement:

07 January 2020

10 Entered in Register,

Copied to Parties:

09 January 2020