EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103995/2016

Held in Aberdeen on 19 November 2020

Employment Judge I Mcfatridge

Mr B Lashore	**Claimant** **Not present or represented**
Weatherford UK Ltd	**Respondent** **Represented by:** **Mr Brown, Advocate** **Instructed by Messrs Burness Paull LLP**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claim is dismissed under Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. In this case the claimant claims that he was automatically unfairly dismissed in terms of section 103A of the Employment Rights Act 1996. The claim has an extremely lengthy history having been subject to a considerable amount of case management. A feature of the case from the outset is that the claimant has made a series of serious allegations of discrimination and malpractice against not only the respondent but also their solicitors and advisers and indeed a number of the Employment

Judges who have been tasked with dealing with the case. Reference is made to the various notes issued following case management hearings. I note that these notes up to Mid 2018 have been listed in the judgment produced by Employment Judge Macleod in this case dated 27 June 2018 and I do not seek to repeat them here. The case then came before Employment Judge Macleod for a final hearing which was due to commence on 17 May 2018. I refer further to Employment Judge Macleod's judgment issued following that hearing. He records that the claimant sought to amend his claim so as to include a claim of ordinary unfair dismissal. This application was refused. There was then what Employment Judge Macleod referred to as a sequence of events which led to the Tribunal issuing the claimant with a strike out warning. A hearing on strike out then took place and Employment Judge Macleod decided to strike out the claim. This decision was subject to a successful appeal to the EAT and the claim was remitted back to the Employment Tribunal. The Employment Appeal Tribunal also ruled on the claimant's appeal against the decision not to allow the claimant to amend his claim so as to include a claim of ordinary unfair dismissal. The Employment Appeal Tribunal refused the claimant's appeal on this ground.

2. Following the remission of the case back to the Employment Tribunal the Tribunal listed the case for a hearing to take place over 11 days starting on 7 May 2020. The parties made a number of case management applications in connection with this hearing.

3. On 16 December 2019 the Tribunal wrote to the parties on the instructions of myself indicating the general approach which I intended to take in relation to case management.

4. I felt it appropriate to remind the parties of the terms of the overriding objective and set this out at the beginning. I then went on to state

> "Applying the overriding objective and in particular the need to deal with cases in ways which are proportionate EJ McFatridge notes that the case was originally set down for a hearing to start on 17 May 2018. This hearing was fixed after a lengthy case management process which included no less than eight preliminary hearings, five of which

were purely for case management. The Employment Appeal Tribunal struck out the previous Tribunal order dismissing the claim but did not interfere with any of the previous case management decisions made. Mr McFatridge's general approach to case management for the hearing set to take place in May 2020 shall be that unless there has been a change of circumstance or other good cause to do so it is unlikely to be proportionate or in line with the overriding objective to revisit case management decisions in respect of matters where a decision was previously made during the process of case management in advance of the May 2018 hearing and also unlikely to be proportionate or in line with the overriding objective to grant orders in respect of new matters which could have been raised in advance of the May 2018 hearing but were not. His view is that unless good cause is shown he will assume the parties were ready or at least supposed to be ready to proceed with the May 2018 hearing and can thus be assumed to be ready to proceed in May 2020."

The letter then went on to deal with the various applications made.

5. A preliminary hearing for case management purposes took place on 31 March and reference is made to the note issued following this hearing. During the course of this hearing the claimant's representative raised once again the issue of the claimant's desire that his claim include a claim of ordinary unfair dismissal. She indicated that she had no instructions to lodge a further application to amend the claim however she was new to the case and it was her view that the claimant's initial ET1 could be interpreted as already including a claim of ordinary unfair dismissal. She indicated that she was unaware of the process by which it came to be the view of the tribunal that there was no claim of ordinary unfair dismissal before it. It should be noted that not only was the claimant's representative new to the claim but the respondent's representative was also new in that she had taken over the claim from other solicitors in the firm who had left and indeed the Employment Judge (myself) had not had much in the way of prior involvement in the claim albeit I had been involved in one preliminary hearing prior to the involvement of Employment Judge Macleod. I undertook to the claimant's representative that, for the purposes of clarifying matters and in the interests of openness I would

take it on myself to obtain a copy of the Tribunal file and familiarise myself with the history of case management so that I could ascertain the circumstances in which the claim came to be characterised as solely a claim of automatic unfair dismissal under section 103A and not a claim of ordinary unfair dismissal. I agreed to do this in the face of considerable opposition from the respondent's representative who indicated that as far as they were concerned the matter was now completely settled following Employment Judge Macleod's ruling and the unsuccessful appeal to the EAT. They also pointed out that their client had required to pay costs of over £80,000 in respect of this case so far and the case had still to be heard. It was their view that the claimant was behaving unreasonably in trying to re-open a matter which had been comprehensively dealt with previously. That having been said I considered that in the interests of transparency it would be appropriate for me to carry out the file check which was requested in order to assure myself that the matter had been properly addressed.

6. By this time the Covid pandemic had started and I was unable to attend the Aberdeen office but I arranged for the box containing three substantial files to be sent to me and I perused this. It only took me a short time to ascertain that in actual fact the matter had dealt with in a thorough and appropriate way in 2016/2017. A preliminary hearing had been held for case management purposes in September 2016 and in advance of this the claimant's then representative had lodged a case management agenda which confirmed the only claim being made was under s103A. There had then been a further preliminary hearing before EJ Hosie. The issue had been fully canvassed before Employment Judge Hosie who had clearly set out the history of the matter to date. The claimant had subsequently sought to amend so as to include a claim of ordinary unfair dismissal and it was EJ Hosie's decision that the sole claim going forward would be the claim of automatic unfair dismissal. That decision had been made following a hearing in December 2016. The judgment was a lengthy one which was extremely clear in stating that the outcome was that there was no case of ordinary unfair dismissal going forward. It was clear to me that there had been a clear judicial decision made in the matter by EJ Hosie in 2017 and that EJ MacLeod had confirmed this decision in

2018 and EJ Macleod's decision had been the subject of an unsuccessful appeal to the EAT. In the circumstances I advised the parties in advance of the next preliminary hearing that so far as I was concerned the matter was closed. I note that in subsequent correspondence the claimant has referred to my decision as indicating a bias on my part against an unfair dismissal claim.

7. One of the other contentious matters relating to case management involved witness statements. The respondent sought to update the witness statement of their witness Mr Harper. The claimant's then agent did not oppose this although she did indicate that her instructions were that she would not be opposing the respondent's application so long as I granted her application that the claimant be allowed to update his witness statement. I indicated that I was not prepared to work on such a quid pro quo. In the absence of any substantial opposition from the claimant saying why the application to amend Mr Harper's witness statement should be refused I decided to grant this application. With regard to the claimant it appeared to me that there may well be considerable merit in the claimant updating his witness statement. The witness statement which had been prepared by him for the 2018 hearing had been prepared without legal assistance. It appeared to be clear that it included a number of matters which were not relevant to the claim. It had not been prepared by a lawyer and I felt the tribunal might benefit from a more focussed document. I indicated that I was not prepared to make a decision on whether or not the claimant would be permitted to amend his witness statement until I and the respondent had seen the proposed new witness statement. I set out my position fairly clearly. If the new witness statement simply consolidated what had already been said by the claimant in a more logical and easy to understand way then there would be no question but that it would be accepted. On the other hand if the new witness statement contained matters which had hitherto not been part of the claim nor previously canvassed by the claimant I would not permit it.

8. A further preliminary hearing took place on 7 May 2020 at which I reiterated my position on these matters. It was agreed that the hearing dates in May would require to be vacated due to the pandemic. It was agreed that the case be provisionally listed for 11 days beginning

19 November 2020. The parties were keen that the hearing proceed on a face to face basis so far as possible.

9. In due course the claimant submitted a proposed amended witness statement. It was strenuously objected to by the respondent. A cursory reading showed that it included many matters which had not been canvassed previously. It also included a number of matters which were irrelevant and in particular contained matters which would only be relevant to a claim of ordinary unfair dismissal. I indicated I was not prepared to accept it.

10. The administration wrote to the parties at my request on 20 August 2020 confirming that I was not prepared to allow the claimant to substitute a new consolidated witness statement for the witness statement previously lodged and setting out my reasons for this. The letter to the parties records

> "The EJ is disappointed that the parties have been unable to reach agreement on this matter.
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> The issue is one of case management and the EJ has to decide whether or not to allow the claimant to substitute a new consolidated witness statement for the witness statement previously lodged.
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> The issue has to be determined in accordance with the overriding objective
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> At the last preliminary hearing on 7 May 2020 I set out the approach I would take in paragraph 6. I stated 'If the new witness statement simply consolidates what has already been said by the claimant in a more logical and easier to understand way then there will be no question but that it will be accepted. On the other hand if the new witness statement contains matters which have hitherto not been part of the claim nor previously canvassed by the claimant then I will not permit the claimant to substitute this for his existing witness statement.'
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> It is clear to me that the new witness statement contains matters which have hitherto not been part of the claim nor previously canvassed by the claimant.
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> Whilst I consider that there is some advantage to the tribunal and the parties in having an updated professionally produced witness

> statement I consider this is outweighed by the fact that additional costs will be incurred and time wasted if the consolidated witness statement is allowed in as it stands.
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> I am not prepared to order the respondent to incur further costs by providing an analysis of the statement. It is reasonably clear which matters are new or irrelevant and which are simply re-expressing what was in the original statement or providing helpful background information.
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> My decision is therefore that I am not prepared to accept the Consolidated Witness Statement as it stands.
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> As a concession to the claimant and in recognition of the fact that costs have been incurred I am prepared to give the claimant a further fourteen days within which they may, if so advised, submit a further consolidated witness statement which complies with the strictures I set out in paragraph 6 of the PH note of & May 2020.
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> If there is any issue regarding whether or not the statement (as amended) complies then I would be prepared to fix a preliminary hearing at that stage in order to deal with the matter."

11. On 18 September 2020 the claimant who had hitherto been represented wrote directly to the Tribunal seeking strike out of the response. He did so in intemperate terms stating that the respondent had misled the tribunal in that at some point in 2018 the respondent had indicated that the claimant could amend an earlier witness statement. The respondent strenuously objected to strike-out. It was their position that there were no competent grounds contained within the application that would justify the Tribunal striking out the defence. I agreed entirely with their position and on 24 September the Tribunal wrote to the claimant confirming that his application would not be considered further.

12. It is probably as well to set out the terms of this letter in full:-

> "The Employment Judge agrees with the respondent that there are no competent grounds contained within it that would justify the Tribunal striking out the defence that continues to be advanced by the respondent in those proceedings. The claimant's position is that he

wishes to overturn decisions which have been previously made in this case by various EJs and relitigate matters which are now closed.

The claimant seeks to rely on an e-mail from the respondent in 2018 where they accepted the possibility that the claimant may wish to amend his witness statement as undermining the stance they took in 2020 that the consolidated witness statement which the claimant sought to lodge should not be accepted. Not only is the claimant's approach inappropriate it is illogical and ignores the context in which the 2020 decision was made.

Employment Judge McFatridge has made it abundantly clear to the parties and in particular to the claimant's agent that the Tribunal would be keen to accept a consolidated witness statement that complied with the criteria he set out. He spent some time spelling this criteria out in detail. The consolidated witness statement which was lodged did not comply with these criteria and would not have assisted the Tribunal in complying with the overriding objective which is why he did not accept it. Whether or not the respondent advised the claimant in 2018 that they would not object to him amending his witness statement at that time is irrelevant.

The claimant also seeks to resurrect the claim of ordinary unfair dismissal which as the Employment Judge previously advised in clear terms was refused by the Tribunal in 2016. The claimant has not only had the benefit of the explanation provided by EJ Hosie at the time but has also had the benefit of the further explanation of what happened which Employment Judge McFatridge sent to his agents earlier this year following a review of the file. The decision not to allow a claim of ordinary unfair dismissal to proceed has also been the subject of an unsuccessful appeal and the position is closed. Even if he wished to it would not be possible for him to now decide to hear a claim of ordinary unfair dismissal.

Given that he considers that the claimant's applications are misconceived and have absolutely no prospect of success he is not prepared to cause further expense to the respondent and the Tribunal system by fixing a further preliminary hearing to deal with them. The applications are refused.

> Employment Judge McFatridge also rejects entirely the allegation that the decisions of himself and previous judges are racially biased. He would suggest that the claimant re-reads the many and voluminous earlier judgments in this case which clearly set out the reasons for every decision which has been made.
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> There is a case to be tried here the final hearing has been fixed for November and it is in the interests of all parties that it proceeds so that each party may have the opportunity of putting forward the case."

13. On 14 October 2020 the Tribunal received notification from the EAT that the claimant had submitted an appeal. The appeal appears to be directed at Mr McFatridge's decision not to strike out the response and his decision that there is no claim of ordinary unfair dismissal currently before the Tribunal.

14. On receipt of this letter the Tribunal wrote to the parties on 14 October 2020 stating that, having received correspondence from the EAT in regard to the case EJ McFatridge has directed that parties respond with their urgent comments on whether the hearing should proceed or whether it should be postponed pending the resolution of the appeal. Parties were asked to respond within seven days i.e. by 21 October. The respondent indicated that they had not yet received a copy of the note of appeal and this was duly forwarded by the Tribunal. The respondent then wrote to the Employment Tribunal on 16 October 2020 indicating that they wished the hearing to proceed and setting out their reasons for this at length. They indicated that in their view the appeal was without merit. They pointed out the case was extremely old and that the events which the Tribunal required to consider took place some five years or so ago. They indicated the case was due to proceed in May 2018. They noted that whilst the claimant was successful in his appeal against strike out, the EAT, while allowing the appeal on the point, noted the claimant's behaviour had been inappropriate. It was their position that the delay from May 2018 to date arose because of the conduct of the claimant. It was their position that the case had reached the point where the respondent must be allowed to have the case litigated to a conclusion. They pointed out that much of the claimant's appeal is directed at yet another attempt by the claimant to reintroduce the claim of ordinary unfair dismissal. They point out that in

their view this appeal would in fact be out of time. They state that the matter of ordinary unfair dismissal has been argued over and decided against the claimant on occasions "almost now too numerous to mention". They also expressed concern about the tone of some of the allegations made in the Note of Appeal. In their view the appeal against a refusal to accept the consolidated witness statement is also out of time and they set out their view which is that there would be no grounds for such an appeal in any event. They expressed concern that the claimant had not included the entirety of the up-to-date pleadings in his Note of Appeal.

15. The claimant did not respond to the Tribunal's invitation to ask him his view as to whether or not the hearing should proceed by the deadline of seven days imposed by the Tribunal.

16. On 23 October the Tribunal sent a reminder to the claimant stating

> "Employment Judge McFatridge has directed that the Tribunal send you a reminder to submit your comments in regard to postponement in the next seven days."

17. On 27 October the Tribunal wrote again to the claimant stating that when he responded with his view on whether or not the hearing should be postponed he should also advise whether he agreed with various case management suggestions which the respondent had earlier made with a view to allowing the hearing to go more smoothly. The claimant was reminded again that he should respond by 30 October. He was specifically advised if he did not then 'a decision will be made by the Employment Judge on 30 October as regards further procedure without any further input from the claimant.'

18. The claimant did not contact the Tribunal or make any response by 30 October.

19. On 3 November the Tribunal e-mailed the parties at 15:28 to advise them that the hearing would proceed.

20. In accordance with recent presidential guidance as to procedure for face to face hearings the Tribunal fixed a short preliminary hearing by telephone which was to take place on 16 November. The purpose of this

hearing was essentially to advise participants at the hearing of the social distancing arrangements which would be in place at the Tribunal centre. The Tribunal wrote to the parties on 9 November 2020 asking them to give dates of availability between 11 and 18 November for such a hearing. The claimant did not respond. The preliminary hearing was fixed for 16 November 2020 at 2:00pm. The Tribunal advised the claimant of this. At 11:59 on 10 November the claimant sent an e-mail which, although it was addressed primarily to the Tribunal appeared to answer an e-mail which had been sent by the respondent to the claimant in relation to an application they had made to the EAT that the sifting of the claimant's appeal be expedited. The letter from the claimant stated

> "Further to the respondent's e-mail which seems to be some form of interim application the claimant writes to make two points (more correctly one set of points regarding the alleged final hearing as well as a premature application which to progress the case quicker at the EAT).
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> Firstly according to well-established legal precedents matters of the Employment Tribunal ought to be sisted pending the outcome of the various items in the appeal submitted to the Employment Appeal Tribunal (EAT). The claimant is opposed to decision by Judge McFatridge to continue the case in the ET. It is important to note that the claimant has alleged that Judge McFatridge is untruthful in the first item of appeal. Until date neither the ET Judge nor the respondent has provided the evidence required to proof the Judge is truthful. As a lay litigant the claimant believes that the parties in this correspondence were better understanding that a case can be brought to the EAT where the ET Judge had no evidence to support his decision. To summarise the first point the claimant does not believe in the legitimacy of the alleged final hearing commencing on the 19th November 2020 and will not be a part of it. From the claimant's perspective the alleged untruthful Judge McFatridge's decision to continue the case at the ET is a purposeful attempt to derail a legitimate appeal raised by the claimant.
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> Secondly, although the claimant will be grateful for an earlier decision on the sift the claimant sees no reason to request for it to be rushed

or attempt to get ahead of other cases in the queue. However the claimant should like to use this opportunity to make an application for a hearing under Rule 3 10 should the sift determine that any or all of the claimant's appeal points are found wanting."

21. The Tribunal wrote to the claimant on 10 November 2020 stating

"We refer to the above named cased and your most recent correspondence. Employment Judge McFatridge notes that you now indicate that you wish to apply for the case to be postponed pending the appeal before the EAT. He notes that you have failed to respond to several enquiries from the Tribunal as to what your position was at an earlier stage in the process and that as a result, given the clear position of the respondent, it was decided that the hearing should proceed. He also notes your statement that the usual practice is to sist ET proceedings pending an appeal to the EAT but notes that this is not the universal practice. The decision is whether or not to adjourn requires to be made on the basis of the overriding objective. The EJ is also familiar with the case of McIntosh Donald Ltd v Anderson EATS/0018/02 where Lord Johnson indicated that where there is an appeal to the EAT whilst proceedings are ongoing it may often be better to proceed to hear evidence under reservation rather than postpone and lose Tribunal time. Given the pandemic, Tribunal time is even more precious and you are asking to postpone a lengthy hearing which is using up one of the few slots available for in-person hearings at the Aberdeen Tribunal on one week's notice in circumstances where you have failed to advise the Tribunal of your position when given repeated chances to do so only a few weeks ago. Employment Judge McFatridge takes into account that the EAT has previously ruled against you on the issue of whether or not you should be permitted to amend your claim. We note that you have indicated that you do not wish the EAT to expedite sifting your appeal and have indicated an intention to request a Rule 3 10 hearing regardless of the reasons given if you are refused. In the event that the EAT reverses its previous position then the case could possibly be re-heard. The claim has now been ongoing for many years and the present hearing has been listed for many months. The witnesses are ready to proceed

> and will be greatly inconvenienced if the case is put off. The respondent will also be caused additional expense. There is a real chance that the cogency of evidence will be lost if the case is further postponed. In the circumstances the application by the claimant for a postponement is refused."

22. The Tribunal clerk required to contact the parties in advance of the hearing on 16 November in order to obtain a telephone number so that they could be dialled into the call. The claimant was e-mailed on 12 November at 09:19 but did not respond. He was then e-mailed again on 13 November at 09:35. He was told that he must provide a contact number by 4pm on Friday 13th. The claimant did not provide any contact number and therefore did not take part in the hearing on 16 November. The hearing dealt solely with the arrangements for social distancing at the hearing and, in accordance with standard instructions from the President of the ET, no note of this hearing was produced.

23. The case was due to proceed at 10:00am on 19 November. The claimant was required to go first since the claim was one of automatic unfair dismissal. My intention was for the claimant to adopt his witness statement and then proceed to cross examination. On the day at the time fixed for the hearing the respondent's Counsel was in attendance together with an instructing solicitor and a representative from the respondent company. There was no appearance by the claimant.

24. I delayed the start until 10:15 so as to account for the fact that the claimant might have had a last minute change of heart and decided to attend but had been held up in some way. The claimant did not attend.

25. I then invited submissions from the respondent. Their motion was that the claim be dismissed in terms of Rule 47.

Respondent's submissions

26. The respondent's representative only dealt with the most recent history of the case. He stated that the respondent were first advised of the claimant's appeal to the EAT when they received the letter from the Tribunal on 14 October inviting them to make comments as to whether or

not the hearing should proceed. He noted that those instructing him had requested that the hearing proceed for the reasons given. He noted that the claimant had failed to meet the deadline for providing his view on whether the hearing should be postponed set out in the letter of 14 October. The Tribunal had then given the claimant another chance and the claimant had been told he should set out his position by 30 October. The claimant did not do so. On 3 November the Tribunal communicated its decision that the hearing would proceed to both parties. The respondent's representative pointed out that it was not until almost exactly seven days after that that the claimant wrote to the Tribunal and the respondent indicating that the hearing should be postponed and the case sisted pending the appeal. He noted that in this letter the claimant had made comments regarding the Judge and the legitimacy of the Tribunal process. He noted that the claimant indicated that he did not believe in the legitimacy of the hearing on 19 November and would not be taking part. He indicated that it was clear from this that the claimant had taken the conscious decision to absent himself from the proceedings. He pointed out the claimant had thereafter failed to provide a telephone number where he could be contacted so as to be able to take part in the short hearing on 16 November to discuss social distancing. He indicated that following this the respondent had written to the claimant simply confirming that the case would be proceeding, the claimant had then written to them at 10:45 on 18 November confirming that he would be following the intention previously stated and reiterating allegations of impropriety against the Judge that were the subject of appeal to the EAT.

27. The respondent's position was that it was abundantly clear that the claimant had made the conscious decision not to attend the hearing.

28. The respondent's representative set out the terms of Rule 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 party's absence."

It was his position that the reason for the claimant's absence was quite clear and was his conscious refusal to take part in the proceedings. It was the respondent's view that the appropriate action for the Tribunal to take would be to dismiss the case rather than to proceed to hear it in the absence of the claimant.

29. The reason for this is that the sole claim before the Tribunal is a claim under section 103A of the Employment Rights Act 1996. In order to establish this claim, the Tribunal requires to find that the claimant has made protected disclosures. Although there is a statement of agreed facts in this case the respondent's position is that they do not accept that any protected disclosures were made either in the manner which was suggested by the claimant or at all. There is at least an evidential burden on the claimant to establish that such disclosures were made. In the absence of the claimant there is absolutely no prospect of the Tribunal making such a finding. In those circumstances the only appropriate course of action would be to dismiss the claim.

Discussion and decision

30. First of all I should say it is extremely unfortunate that matters have come to the pass which they have. I should record that a considerable amount of work has been carried out over the years both by the Tribunal and no doubt also be the respondent and indeed the claimant and those advising him in order to get this case ready for trial. There are no less than 11 volumes of productions. There have been innumerable case management hearings. The purpose of the Tribunal is to hear cases which can be tried. The claimant has made allegations in his ET1 which if true would entitle him to a remedy and if not true then the respondent is entitled to be exonerated. Considerable efforts were made by the Tribunal system to make dates available for this claim to be heard in person.

31. The above having been said I was in no doubt that the correct course of action is to dismiss the claim. I considered that on the basis of the information available to me it was abundantly clear that the reason the claimant did not appear was because he had decided that he was not prepared to take part in the Tribunal. This decision is of a pattern with his

previous behaviour where he is simply not prepared to accept when decisions go against him and tries to relitigate matters over and over again until he gets the resolution he wants. It was made abundantly clear that the hearing would be proceeding and the claimant in turn has made it clear that he would not be attending.

32. The choice which I have is whether to proceed to hear the claim in the absence of the claimant or dismiss the claim under Rule 47. I agree with the respondent that in the circumstances it would be entirely pointless to proceed to hear the respondent's evidence. I agree that the evidential burden is on the claimant to show that protected disclosures were made. In the absence of the claimant I do not see any possible way that I could make a finding in fact that such protected disclosures took place. If no protected disclosures took place then the inevitable result is that the claimant's claim does not succeed. It would be entirely pointless for me to proceed with the claim when the end result is that the claimant could not possibly succeed. In the circumstances I therefore advised the respondent's Counsel that I accepted his motion and that the case would be dismissed. I should record that by this time it was just after 10:30 and there was still no appearance by the claimant.

33. I should also record that the respondent's counsel indicated that he had instructions to make a motion for expenses against the claimant. I advised that I was not prepared to consider this in the absence of the claimant where the claimant had not had any advance warning that such a claim might be made at this hearing. I indicated that, if so minded, the respondent should submit their written motion for expenses to the tribunal no later than 14 days after the date of the hearing.

Employment Judge **Ian Mcfatridge**

Date of Judgement **26 November 2020**

Date sent to parties **26 November 2020**