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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100496/2021**

**Hearing Held via Cloud Video Platform (CVP) on 16 April 2021**

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**Employment Judge J McCluskey**

**Mr K Clark**

**Claimant  
Not present and  
Not represented**

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**Gateway Insurance Services Ltd**

**Respondent  
Mr Gareth McCallum  
Director**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claim is dismissed in terms of Rule 47 of  
25 the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013,  
the claimant having failed to attend the hearing and reasonable enquiries having  
been made as to the reason for his non-attendance.

### **REASONS**

30 **Introduction**

1. This was a final hearing. It was fixed to determine the claimant's claim for arrears of pay and his assertion that no written statement of terms and conditions had been provided. His ET1 was presented on 3 February 2021.

ACAS early conciliation commenced on 10 January 2021 with a certificate being issued on 3 February 2021. The claim was resisted.

2. The Tribunal wrote to the claimant by correspondence dated 5 February 2021. The claimant was advised that his case would proceed to a one day final hearing at 11am on 16 April 2021. The claimant was advised that the final hearing would take place by video call using Cloud Video Platform (CVP). The claimant was advised that if he considered that a Cloud Video Platform (CVP) hearing would not be appropriate in his case he required to let the Tribunal know within 7 days and to explain why. The Tribunal records show that no response was received from the claimant.
3. The Tribunal wrote to the parties by correspondence dated 10 March 2021. The parties were advised that the case would proceed to a one day final hearing on 16 April 2021 and that the views of parties were sought by 17 March 2021 on the hearing being heard by way of the Cloud Video Platform (CVP). The parties were advised that if there were any objections to a Cloud Video Platform (CVP) hearing the case would be heard by way of a Telephone Conference Call instead.
4. The Tribunal wrote to the parties by correspondence dated 24 March 2021, no response having been received to the correspondence dated 10 March 2021. The parties were required to respond to the correspondence dated 10 March 2021 within 7 days. The Tribunal records show that no response was received from the claimant.
5. The Tribunal wrote to the parties by correspondence dated 8 April 2021. The claimant was required to respond by return with his views on the final hearing proceeding via Cloud Video Platform (CVP). The claimant was advised that if no reply was received it will be assumed that the claimant has no objections to the case being heard via Cloud Video Platform (CVP) and the hearing will proceed accordingly. The Tribunal records show that no response was received from the claimant.

6. The Tribunal wrote to the parties to invite them to attend a test for the CVP hearing which had been fixed. The Tribunal also left various voicemails for the claimant in connection with the test on the mobile phone number provided on the ET1. The Tribunal records show that no response was received from the claimant.
7. At the Cloud Video Platform hearing start time of 11am on 16 April 2021 the respondent was in attendance. The claimant was not in attendance. Efforts were made on the morning of the hearing, both before 11am and at the start time of 11am, by the Tribunal clerk to contact the claimant on the mobile phone number provided on the ET1, but without success. The Tribunal clerk confirmed that voicemail messages had been left with the claimant on the day before the hearing on the mobile phone number provided. The claimant had not responded. On the date of the hearing when the Tribunal clerk called the claimant, including at 11am, the mobile phone number had no voicemail facility available.

### Relevant law

8. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“ET Rules”) provides that if a party fails to take part or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. However before doing so, the Tribunal shall consider any information which is available to it after any enquiries that may be practicable about the reasons for the party's absence.

### Discussion and decision

9. In terms of Rule 47, I considered the information available to me. I noted on the ET1 that the claimant had ticked the box indicating that he did not wish a Cloud Video Platform (CVP) hearing. I noted that a Cloud Video Platform hearing had been fixed. The correspondence advising the claimant of the date and time of the (Cloud Video Platform) hearing had gone out on 5 February 2021 to the address the claimant had provided in his ET1. However, I also

considered that the claimant had been given several opportunities thereafter to advise the Tribunal if he did not consider that a Cloud Video Platform hearing would be appropriate to hear his case. I noted that the claimant was notified that his case could proceed by way of a telephone conference call if there were objections to a Cloud Video Platform (CVP) hearing. I noted that the claimant had been contacted by the Tribunal on several occasions including by email and mobile phone, using the contact details provided in the ET1, to try to ascertain his position. No response at all was provided by the claimant. I had no information whatsoever about the reason for the claimant's absence at the hearing. In the circumstances I concluded that the claimant did not insist upon his claim.

10. In reaching my decision I took account of the overriding objective within the ET Rules. I considered that in all the circumstances of this case it was fair and just that the claim be dismissed, having considered the information available to me and balanced the interests of both parties.

11. I reminded myself that a claimant has a right to seek a reconsideration in the interests of justice under Rules 70 and 71 of the Employment Tribunal Rules within 14 days of the issue of this Judgment to parties. However, as there has been no communication to the Tribunal prior to this hearing such a reconsideration would be subject to a proper explanation being provided to the Tribunal for the claimant's non-attendance.

12. In the circumstances the claims are dismissed.

Employment Judge: Jacqueline McCluskey  
Date of Judgment: 30 April 2021  
Entered in register: 01 May 2021  
and copied to parties