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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109770/2021

Hearing Heard by Cloud Video Platform (CVP) on 10 August 2021

Employment Judge: Ronald Mackay

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Ms A Hill

**Claimant
Not present and not
represented**

South Ayrshire Council

**Respondent
Represented by:
Ms C McMenamin,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claimant dismissed having failed to attend or be represented at the Hearing, the claim is dismissed.

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REASONS

1 This case was listed for a Hearing on 10 August 2021 at 11.00am. The Claimant did not attend and was not represented. The Respondent was represented by its solicitor and had two employees of the Respondent in attendance.

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2 Prior to the commencement of the Hearing, the Tribunal Clerk sought to make contact with the Claimant. She did not respond to telephone calls.

3 On behalf of the Respondent, Ms McMenamain stated that settlement had
been agreed in principle but that they had not been able to finalise the COT3
with ACAS. She stated that ACAS had had difficulty in making contact with
the Claimant to do so.

5 4 Ms McMenamain confirmed that the Claimant was still employed by the
Respondent, albeit not scheduled to work on the day of the Hearing. She
advised that it had been explained to the Claimant by her manager that unless
settlement terms were confirmed through ACAS, the Hearing would require
to proceed.

10 5 Ms McMenamain also made reference to a telephone conversation between
the Claimant and the Tribunal Clerk (which had been relayed to her) to the
effect that the Claimant did not consider that the Hearing required to proceed
given the settlement reached.

6 The Tribunal was adjourned in order for further investigations to be carried
15 out. The Clerk confirmed that he had spoken to the Claimant on the previous
day (in the context of seeking to establish a connection test for the purposes
of the remote hearing). During the course of that conversation, the Claimant
commented to the effect that she felt the Hearing did not require to proceed
because the case had been settled. Nonetheless, the Clerk sent her an email
20 with the joining details.

7 The Tribunal requested that the Clerk make a further attempt to contact the
Claimant. He did so and reported that her phone was not answered.

8 The Hearing reconvened at which time the position of the Clerk was
explained. Ms McMenamain thereafter moved for the claim to be dismissed in
25 accordance with Rule 47 of the Employment Tribunals (Constitution & Rules
of Procedure) Regulations 2003. She stated that her instructions were that
the Respondent was nonetheless willing to abide by the terms of the
settlement agreed in principle.

9 Having regard to the failure of the Claimant to attend, the factual background
30 to the matter, and the various efforts made to contact her, the Tribunal

concluded that it was appropriate that the claim be dismissed in accordance with Rule 47. Whilst making clear that it had no power to compel the Respondent to do so, the Tribunal agreed to note the undertaking made on behalf of the Respondent that it was willing to abide by the settlement to the extent of the terms agreed in principle.

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10 This Judgment was given orally at the Hearing.

Employment Judge: Ronald Mackay

10 Date of Judgment: 12 August 2021

Entered in register: 18 August 2021

and copied to parties