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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103790/2020**

**Held via Cloud Video Platform (CVP) on 7 May 2021**

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**Employment Judge J Young**

**Karen O'Donnell**

**Claimant:  
In person**

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**Moore House School Ltd**

**Respondent  
Represented by:  
Mr D McGuire,  
Solicitor.**

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

The Judgment of the Employment Tribunal is that the claims of unfair dismissal and discriminatory treatment on the grounds of the protected characteristics of sex and disability are struck out in terms of Rule 37(a) of Schedule 1 to the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013.

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### **REASONS**

1. In this case the claimant presented a claim to the Employment Tribunal complaining that she had been unfairly dismissed and discriminated against by the respondent on the grounds of the protected characteristics of sex and disability. The respondent admitted dismissal of the claimant but denied it was unfair or that there had been any discriminatory treatment.
2. The claimant had advised that she had continuous employment with the respondent in the period between 1 April 2019 and 29 June 2020 and on the face of matters lacked the necessary qualifying period of service for the

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Tribunal to have jurisdiction to hear that claim. By letter of 28 August 2020 she was asked if she was proceeding with that claim and if so on what basis and also asked for clarification of the grounds of the complaints of discrimination.

- 5 3. There was some delay in the responses made. The claimant made effort to obtain legal assistance and extensions of time were allowed for that purpose. However no meaningful response was made and on 24 November 2020 an application was made on behalf of the respondent to strike out the claims on the basis that they had not been actively pursued. That led to a preliminary  
10 hearing to consider case management on 17 March 2021 at which time there was detailed consideration of the basis of the claims being made and preliminary observations made all in terms of the Note also issued 17 March 2021. At that time the claimant was given some further time to set out the basis of her claims and this further preliminary hearing was fixed to consider  
15 (a) whether the claims should be struck out as having no reasonable prospect of success (Rule 37(a) of the Tribunal Rules of Procedure); or (b) a deposit should be ordered as the claims had little reasonable prospect of success (Rule 39); or (c) if appropriate make further case management orders.
4. By the date of the hearing the claimant had written to say that she wished to  
20 withdraw her discrimination claims and acknowledged that she had less than 2 years' service with the respondent.
5. At the hearing the claimant confirmed that she was unable to afford  
representation and was not proceeding with her discrimination claims. She advised that in her long service in the care sector she had never been the  
25 subject of complaint. She confirmed that she continued to maintain that she had been unfairly treated by the respondent in the dismissal and that the allegations were unfounded and the investigation flawed but recognised the difficulty in service qualification.
6. The position of Mr McGuire was that there could only be one outcome given  
30 the position reached namely that the claims should be struck out.

7. Given the claimant's confirmation that she was not proceeding with the discrimination claims and that she lacked the necessary 2 years' service qualification as required by s108 of the Employment Rights Act 1996 in respect of the claim of unfair dismissal then it was inevitable that the claims  
5 required to be struck out as having no reasonable prospect of success in terms of Rule 37(a) of the Tribunal Rules of Procedure.

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Employment Judge: Jim Young  
Date of Judgment: 11 May 2021  
Entered in register: 25 May 2021  
and copied to parties

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