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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100093/2021 (V)

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Public Final Hearing held in Glasgow by Cloud Based Video Platform
(CVP) on 30 September 2021 at 10am

Employment Judge Mr. A. Tinnion

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Mr. Paul Allan

Claimant
No attendance

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Caledonia Decorating Ltd.

Respondent
Mr. Harrison (Director)

JUDGMENT

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1. The Claimant's claim against the Respondent is dismissed under Rule 47.

REASONS

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2. By an ET1 presented on 7 January 2021, the Claimant asserted a complaint that the Respondent owed him wages of £236 for work done on 24-25 November 2020. The Claimant's details of claim alleged his employer was not the Respondent but a recruitment/labour supply agency called Kennedy Consulting Services Ltd (**KCS**), who (on his case) had been engaged by the Respondent to assist it in providing services at Perth College pursuant to the Respondent's own

contract with a business called Logie Builders (Dundee). In its ET3, the Respondent denied the claim on the primary basis that the Claimant was not one of its employees but a self-employed worker working for KCS.

3. In the event, the Claimant did not attend the final hearing on 30 September 2021 at 10am. No representative attended on his behalf. At the commencement of the final hearing, Tribunal clerk "M" informed the Employment Judge that she had telephoned the Claimant that morning and spoken to him, and the Claimant had told M on the call that (i) he was not attending the hearing (ii) he *"wants to waste everyone's time, and go on as long as possible to see if the Respondent would back out of it"* (iii) *"the Respondent has to pay the agency"* (which the Tribunal infers must be a reference to KCS). M also informed the Employment Judge that the Claimant had also spoken to her colleague Tribunal Clerk "L" on the telephone, and told L that he *"never intended to turn up at the hearing"*.
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4. Because the Claimant did not attend the final hearing on 30 September 2021 and was not represented at that hearing, the Tribunal has the power under Rule 47 to dismiss the claim or proceed with the hearing in the absence of that party.
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5. The Respondent's representative at the final hearing – Mr. Harrison, a director/shareholder – was asked whether he wished to apply for the Tribunal to exercise its power under Rule 47 to dismiss the claim rather than proceed to hear the claim to a conclusion on its merits. Mr. Harrison confirmed he did wish to make that application.
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6. The Tribunal considered the Respondent's application, and granted it. Based on (i) the information the Claimant provided by telephone to Tribunal Clerks "M" and "L" (ii) the highly unlikely prospect in the circumstances that any further enquiries with the Claimant would serve any practical or useful purpose - the Tribunal was satisfied that it was in the interests of justice and consistent with the Overriding Objective (dealing with cases fairly and justly; dealing with cases in ways proportionate to the complexity and importance of the issues; avoiding delay; saving expense) to dismiss the claim. The reason for the Claimant's absence at
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the final hearing is a deliberate, wilful decision on the Claimant's part not to attend that hearing, for no good reason.

7. After the Tribunal dismissed the claim, Mr. Harrison was asked whether he wished to make any further applications. He said no.

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Employment Judge : Antoine Tinnion
Date of Judgment : 30 September 2021
Date sent to parties: 05 October 2021

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