



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4110821/2019**

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**Held in Glasgow (by CVP) on 12 July 2021**

**Employment Judge B. Beyzade**

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**Mr Kris Douglas**

**Claimant  
Not present and not  
represented**

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**XS Transport Ltd**

**Respondent  
Represented by:  
Mrs Qurra Amir,  
Litigation  
Consultant**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The judgment of the Tribunal is that:**

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The claimant being neither present nor represented at a point in excess of 1 hour after the time set for Final Hearing and there being no answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with him and the claimant not having otherwise communicated with the Tribunal; on the respondent's application made at the Bar, the Tribunal dismisses the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

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**REASONS**

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1. The claimant lodged a claim for pay arrears, notice pay, holiday pay and other payments on 16 September 2019, which the respondent denied. The claim was sisted for a substantial period of time due to other proceedings in a different jurisdiction. Upon the resumption of the claim, a Preliminary Hearing

took place before Employment Judge Meiklejohn on 20 May 2021. At that hearing the Tribunal dismissed the claimant's claims for unlawful deduction of wages and holiday pay upon withdrawal by the Claimant under rule 52 of *Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* and a judgment was sent to the parties on 26 May 2021 accordingly. Parties were directed to exchange documents 28 days before the Final Hearing, to prepare a joint Bundle of Productions 21 days before the Final Hearing, to file and to exchange witness statements 14 days before today's hearing, and the case was to be listed for a Final Hearing for 1 day.

2. The case called for Final Hearing at Glasgow on 12 July 2021 at 10.45am.
3. The respondent's representative, Mrs Qurra Amir and Ms Lindsay Forsyth, Finance Director of the respondent were in attendance and ready to proceed to Hearing.
4. There was no appearance for on or behalf of the claimant.
5. The case file records that Notice of the date and time set down for Hearing was sent to both parties on 4 June 2021 respectively at the correspondence addresses provided by them to the Employment Tribunal for the purposes of receiving such communications. No return of the Notice of Hearing issued to the claimant has been received by the Tribunal.
6. On the sitting Judge's directions the Clerk checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Final Hearing.
7. On the sitting Judge's direction the Clerk attempted to communicate with the claimant on the telephone number provided by the claimant for that purpose, at 10.50am. A voicemail message was left advising the claimant that if he did not log-in to the Hearing by 11.15am the Hearing will proceed in his absence.

The claimant was also sent an email by the Clerk at 10.59am requiring the claimant to log-in and attend the hearing by 11.15am and in default of which the Final Hearing would proceed in his absence. I am also informed by the Clerk that an attempt was made to carry out a CVP test in respect of today's hearing on 09 July 2021 at 10.00am but the claimant did not attend the appointment.

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8. The Tribunal sat at 11.01am and then adjourned and sat again at 11.17am to afford the Claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding his non-attendance.

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9. At 12.22pm and on the assumption that by his unexplained non-attendance the claimant sought to communicate an intention not to insist upon his claim, and on the respondent's application the Tribunal dismissed the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

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10. If the Tribunal is wrong in that assumption it will be open to the claimant to consider proceeding by way of Application for Reconsideration of the Judgment.

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11. The respondent's representative also applied for a strike out order under rules 37(1)(c), (d) and (e). The Tribunal was referred to the cases of *Weir Valves and Control (UK) Limited v Armitage [2004] ICR 371* and *Khan v London Borough of Barnet UKEAT0002/18*. The respondent's representative confirmed that there was no particular advantage to the respondent of the strike out application, and that the matter could properly be disposed of under rule 47. I noted that the respondent provided a bundle of productions and witness statements which were only sent to me today and the claimant did not submit any productions or witness statements. He did not attend today's hearing and rule 47 specifically deals with non-attendance at a hearing. I therefore considered the respondent's application under rule 47 to be well-founded and it was unnecessary to determine the respondent's strike out

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application made pursuant to Rule 37 in the circumstances. The Tribunal took into account its overriding objective (Rule 2).

5 *I confirm that this is my judgment and written reasons in the case of Mr Kris Douglas v XS Transport Ltd Case No 4110821/2019 and that I have signed the order by electronic signature.*

10 Employment Judge: Beyzade Beyzade  
Date of Judgment: 12 July 2021  
Entered in register: 05 October 2021  
and copied to parties

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