



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4108096/2021**

**Preliminary Hearing Heard by Cloud Video Platform (CVP) on 28 October  
2021**

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**Employment Judge R Mackay**

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**Ms K Boyle**

**Claimant  
Not Present & Not  
Represented**

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**NHS24**

**Respondent  
Represented by  
Ms L Gallagher  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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

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**REASONS**

**Introduction**

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1 This is a claim for unfair dismissal. It was set down for a one day preliminary hearing to deal with the issue of time bar. The effective date of termination of the Claimant's employment was 20 January 2020. Her claim was submitted on 9 March 2021.

2 The case had previously been listed for the same purpose on 26 July and 15  
September 2021. On both occasions, the Claimant sought, and was granted,  
a postponement due to her annual leave commitments. The hearing today  
was fixed following the submission by her of suitable dates.

5 3 The Claimant participated in a test call with the Employment Tribunal Clerk  
on 27 October 2021. She did not raise any issues about attending. She  
subsequently emailed the Employment Tribunal in the following terms  
(grammatical errors in the correspondence are replicated):

*“Good Evening,*

10 *I am very sorry for the late notice but this has only come to light whilst going  
through the test run with the clerk tonight regarding length of time for this case  
and my inexperience of this situation. this unfortunately I haven't booked the  
whole day off work and have only been given leave for 2hrs. I'm not asking  
for the hearing to be rescheduled as I take full responsibility of this being my  
15 error and fully understand for it to go ahead as scheduled. I appreciate  
everyone has busy schedules and sorry to time waste.*

*The test has brought it home that I myself don't feel able to go through with  
this scheduled preliminary hearing via video link my anxiety levels are very  
high and won't be able to cope with it. Again I'm sorry.*

20 *This is a very stressful situation for myself who doesn't deal with judges,  
solicitors etc and the thought of other people or strangers being able to link in  
I cant do it.*

*Please accept my apologies*

25 *I have copied Luke Murphy into this email as he advised that he would be  
attending tomorrow as well.*

*Kind regards*

*Karen Boyle”*

4 On the instructions of the Employment Judge, the Clerk responded to the effect that the hearing would proceed as scheduled and that the Claimant would be able to make any representations she wished at the outset. She did not appear and was not represented at the start of the hearing. The Clerk  
5 attempted to make contact with the Claimant. She did not respond to his calls. She subsequently sent two further emails in the following terms:

*“Morning Luke,*

*I have just seen I have 2 missed calls from your mobile number unfortunately I'm unable to talk I have myself in such a panic and anxiety is through the roof.*

10 *Karen”*

*“Morning Luke,*

*Thank you and please pass on my sincere apologies its just all got to much for me. All I wanted was what I had been promised and that was an independent investigation into the bullying of my team manager and that once  
15 the investigation was concluded I could start back as if I had never left and that was not upheld.*

*Thanks*

*Karen”*

5 The last of the emails was not seen by the Tribunal until after the hearing had  
20 concluded.

### **Respondent's Submissions**

6 On behalf of the Respondent, Ms Gallagher asked for the claim to be struck out in accordance with Rule 37(1)(b) and/or Rule 37(1)(d) and/or dismissed  
25 in accordance with Rule 47 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013.

7 She submitted that one interpretation of the Claimant's initial email is that the  
Claimant was withdrawing her claim. She also pointed to a history of inactivity  
and lack of engagement by the Claimant in the Tribunal process.

8 In response to the second email set out above, she submitted that there had  
5 been no prior indication of any ill health such that that the Claimant would be  
unfit to attend. She highlighted the absence of any medical evidence.

9 She moved for expenses of the hearing today to be awarded in favour of the  
Respondent.

### Decision

10 10 The Employment Tribunal considered that it was appropriate to focus on Rule  
47 rather than considering strike out in accordance with Rule 37. There was  
insufficient information before the Employment Tribunal to make a judgment  
in connection with the latter.

11 The terms of the Claimant's initial email might well be construed as a  
15 withdrawal of her claim. That view is supported by the Claimant's third email  
noted above (which was received following the Tribunal's decision).

12 The Claimant's principal reason for not attending appeared to relate to the  
length of the hearing and the limited amount of time she had taken off work.  
Having regard to the fact that the hearing was clearly fixed for one day on  
20 more than one occasion, the Tribunal considered there to be no justification  
for adjourning the hearing on that basis.

13 In relation to the Claimant's health, whilst the Tribunal is sympathetic to  
unrepresented parties who find the Tribunal process stressful, there was no  
evidence to suggest that the Claimant had any medical condition which would  
25 have precluded her from attending. The Tribunal is well placed to ensure that  
parties are on an equal footing so far as is possible.

14 For those reasons, and having regard to the interests of the Respondent who  
had a witness ready to give evidence and were defending a case brought  
almost a year late in circumstances where no reason had been advanced as

to why it should be considered out of time, the Tribunal dismissed the claim under Rule 47.

15 On the question of expenses, whilst the Respondent has been put to  
additional expense given the late stage at which the Claimant communicated  
5 her unwillingness to attend the hearing, the Tribunal was mindful of the fact  
that the Claimant was unrepresented and did not consider it appropriate to  
make an award of expenses.

10 Employment Judge: Ronald Mackay  
Date of Judgment: 29 October 2021  
Entered in register: 03 November 2021  
and copied to parties

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