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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109220/2021

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Heard by Cloud Video Platform (CVP) on 22 October 2021

Employment Judge R Mackay

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Ms E Higgins

**Claimant
Not Present &
Not Represented**

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with YOU Ltd

**Respondent
Represented by
Ms Irvine
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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

REASONS

Introduction

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1 This is a claim for unfair dismissal. It was set down for a preliminary hearing to determine the length of the Claimant's service. The Claimant stated that her employment commenced on 5 December 2018. The Respondent's position was that her employment commenced on 27 May 2019, and that she

had been employed by an agency in the period prior to that. If the Respondent's position is correct, the Claimant lacks the necessary qualifying service to claim unfair dismissal.

2 On the morning of the hearing, the Claimant emailed the Employment Tribunal
5 Clerk in the following terms (grammatical errors have not been corrected):

"Hi Luke,

Unfortunately I have been up most of the night not very well I have a sickness bug, can we reschedule this as I will be running to the toilet every 10 minutes please

10 *Many thanks"*

3 The email was copied to the Respondent's solicitor who responded in the following terms:

"Dear Mr Murphy/Ms Higgins,

15 *I have spoken with my client to obtain instructions on Ms Higgins suggestion that she would like to have today's Hearing re-scheduled.*

I am instructed to advise that whilst the Respondent does appreciate the Claimant's difficult position if she now finds herself unwell, it is not willing to agree to a postponement of the Preliminary Hearing.

20 *It is happy to accommodate whatever breaks the Claimant may require during the course of the Hearing. A full day has been set aside, and given the narrow scope of the issue to be decided, the evidence and witnesses should not take too long to run through. Further, closing submissions by parties after the witness evidence could be conducted by way of written submissions (within a reasonable period after the Hearing) if that would assist the Claimant and*
25 *Employment Judge Hearing the matter.*

30 *The Respondent has required to obtain two witness Orders for witnesses outside of its organisation to attend today. Delay would further inconvenience those witnesses. It would also put the Respondent to further expense. The Claimant has from the outset of this claim been given ample opportunity to state her explanation as to why she believes she has the required two years continuity of service to bring an unfair dismissal claim, and provide any supporting evidence. She has only produced full bank statement for the period December 2018 to November 2020 late yesterday afternoon, and no other documentation upon which she bases her assertions. She failed to*
35 *engage with our office pre ET3 submission and post, and failed to comply with*

Tribunal Directions seeking that she set out her argument regarding the 2 years' continuity of service point with supporting evidence. Please see my application of 12/10/21 for a history of the correspondence that ensued before the ET eventually assigned today's Preliminary Hearing.

5 *This is not an overly complex matter, and should and could have been capable of having supporting argument and evidence put forward by the Claimant when we originally requested that 4/6/21 and the Tribunal then requested the Claimant do so between correspondence of 17/6/21 to 10/9/21.*

10 *As such we are in the Tribunal's hands as to whether such a postponement application is granted, but oppose that on the basis of the above. It is submitted that a postponement is not in line with the over-riding objective.*

Yours Faithfully"

4 On the instructions of the Employment Judge, the Clerk emailed the parties to the effect that the hearing would proceed as scheduled and that if the
15 Claimant wished to make a postponement application, this would be considered at the start of the hearing. Parties were asked to acknowledge receipt of the email. The Respondent did so through its solicitor. No acknowledgement came from the Claimant.

5 The Claimant did not attend the hearing at the scheduled time. It was
20 adjourned to see if contact could be made with her. The Clerk telephoned but received no answer. He left a voicemail which prompted a text from the Claimant at 10.08. In it, the Claimant stated:

6 *"I can't even lift my head, I have a bucket at the side of my bed. That's how bad it is. Am sorry, I really I can't (crying emoji)".*

25 7 The Hearing reconvened at 10:15.

Respondent's Submissions

8 On behalf of the Respondent, Ms Irvine moved for the claim to be dismissed
under Rule 47 of the Employment Tribunals (Constitution & Rules of
Procedure) Regulations 2013. She spoke to her email and elaborated on
30 what she described as a continuous failure on the part of the Claimant to engage with either her or the Employment Tribunal.

9 She highlighted multiple occasions on which the Claimant was asked to provide evidence to support her contention that she was employed by the Respondent from the date set out in her ET1. She set out the sequence of relevant failures.

5 10 Before submitting its ET3, the Respondent requested information on the continuous service point. No response was received.

11 The Employment Tribunal wrote to the Claimant on 17 June 2021 to provide comments on the continuous service point. She did not reply.

12 On 2 July 2021, the Employment Tribunal wrote to her again. They gave her
10 until 9 July 2021 in which to respond. She responded on 9 July 2021 to state that she had a new phone and was not clear as to what she had to provide.

13 On 19 July 2021, the Employment Tribunal wrote to her again copying its letter of 17 June 2021.

14 On 21 July 2021, a separate letter was sent by the Employment Tribunal to
15 the Claimant asking her to respond to the suggestion that she did not have the requisite service in order to claim unfair dismissal.

15 On 30 July 2021, the Employment Tribunal wrote again requesting a response by 6 August 2021.

16 On 31 July 2021, the Claimant responded to the effect that she did not
20 understand what she had to do.

17 By correspondence on 4 August 2021, she was again asked to respond to the letter of 21 July 2021. She failed to do so.

18 On 12 August 2021, the Employment Tribunal wrote to the Claimant referring
25 to the letter of 4 August 2021 and requiring a response within seven days. There was reference in that letter to possible strike out of the claim.

19 The Respondent itself submitted a strike out application on 12 August 2021.

20 The Claimant emailed the Employment Tribunal on 12 August 2021 to the effect that she did not understand what she had to do. She indicated that she suffered from dyslexia.

21 By correspondence of 16 August 2021, the present CVP hearing to determine
5 time bar was fixed.

22 The Respondent's representative went on to refer to a significant amount of correspondence between her and the Claimant thereafter. The request for information from the Claimant ultimately resulted in her producing three documents the day before the hearing. These are bank statements which
10 show payments going into her account. She submitted that they support the Respondent's position that she was not employed by the Respondent before 27 May 2019.

23 Having regard to this procedural history, she submitted that the Claimant's actions amounted to a further delaying tactic. She referred to the
15 inconvenience caused to the Respondent not least by virtue of the attendance of two third parties for whom witness orders had been granted.

Decision

24 Having considered the material before it and the Respondent's submissions, the Employment Tribunal was satisfied that the claim should be dismissed
20 under Rule 47.

25 It noted the conflicting accounts of the Claimant's illness and her apparent differing abilities to do different things over a short period of time. She showed discourtesy in failing to reply to the email and telephone call from the Clerk. She was clearly able to send emails and text messages during the relevant period, and her initial email suggested an ability to attend the hearing, albeit
25 with regular breaks. The Respondent had reasonably suggested a willingness to accommodate any issues the Claimant had.

26 The history of non-compliance with requests from the Employment Tribunal is
quite extreme in what was a very simple matter. The Tribunal could not
discern any particular excuse for the Claimant not responding to the multiple
requests from the Employment Tribunal on the simple question as to why she
5 claimed the length of service she did. The Claimant, who is unrepresented,
was able to submit a clear and coherent ET1.

27 It is relevant too in the Tribunal's decision that the only information she has
produced is not supportive of her position.

28 Against that background, the Claimant's request on the morning of the hearing
10 must be treated with some scepticism.

29 In considering the interests of the Respondent, as a consequence of the
Claimant's actions the Respondent has been put to significant additional
expense and inconvenience as have the third-party witnesses ordered to
attend the hearing today.

15 30 For those reasons, the claim is dismissed under rule 47. There was no
request for expenses to be awarded and no award is made.

Employment Judge: Ronald Mackay
Date of Judgment: 29 October 2021
20 Entered in register: 22 November 2021
and copied to parties

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