



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108933/2021 (V)

10

**Preliminary Hearing Held by Cloud Based Video Platform (CVP) on 24
November 2021**

Employment Judge Neilson

15

Mr Kris Scullion

Claimant

20

Axle Group Holdings Limited

**Respondent
Represented by
Ms Chinhengo-
Solicitor**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant having failed to appear or be represented the claims are dismissed.

30

REASONS

Background

35

1. This was a claim for unfair dismissal and unlawful deduction from pay (with regard to non-payment of statutory sick pay). The claim was lodged on 4 April 2021. With regard to the allegation of unfair dismissal the alleged dismissal took place on 19 February 2020.

2. On 12 July 2021 the case called for a preliminary hearing before Employment Judge Jones. The Employment Tribunal ordered the respondent to provide a breakdown of a payment of £1500 made to the claimant on 4 July 2021. The claimant was thereafter to notify the respondent and the Employment Tribunal whether or not he still maintained further sums were due to him and if so to set out what they were. The claimant was further required to notify the Employment Tribunal if he was insisting upon his claim for unfair dismissal and if so to set out why it had not been reasonably practicable to lodge the claim within the three months of the date of his dismissal. By e mail of 27 July 2021 to the respondent and Employment Tribunal the claimant stated that he did wish to pursue his unfair dismissal claim. The claimant did not in that e mail set out the sums that were allegedly due to him.
3. The case called for a further Preliminary Hearing on 27 August 2021 before Employment Judge Tinnion. The claimant did not attend. Attempts were made to contact the claimant on the morning of the hearing but unsuccessfully. The Preliminary Hearing proceeded in the absence of the claimant. The Employment Tribunal made an unless order under Rule 38 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“the Rules”). The claimant was required to produce a document to the respondent by 18 October 2021 setting out the details of his unlawful deductions claim. Failure to do so would result in the dismissal of his claim for unlawful deductions. Separately the Employment Tribunal fixed a further Preliminary Hearing to specifically consider the issue of time bar in relation to the unfair dismissal claim.
4. By e mail on 26 October 2021 both the claimant and the respondent were notified of the date of the Preliminary Hearing by CVP on 24 November 2021. The clerk attempted to contact the claimant to set up a time for a test of the CVP facility prior to 24 November 2021. The claimant responded by e mail to the clerk in the following terms:- *“Hi [], Sorry not sure if I am attending yet as since hearing date was arranged all that’s been happening is me trying to be managed out of the company bombarded with letters, zoom meetings, request for information not given from the company about my stopped pay. Even had*

people at my house checking my cars etc. All because I stood up to a director who was in the wrong. Just had enough and they will win because I don't have a fancy legal team or submitted right paperwork. I just wanted to do my job that's it and no one protects us anymore. Thanks Kris Scullion"

5 5. At the Hearing on 24 November 2021 the respondent was represented by Ms Chinhengo. There was no attendance by the claimant and no representation on his behalf. At the request of the Employment Judge the clerk attempted to contact the claimant by phone on three occasions and left two voice mail messages. In addition two e mail messages were left. There was no response
10 from the claimant.

6. Ms Chinhengo confirmed to the Employment Tribunal that the claimant had not provided the information about his unlawful deductions claim by 18 October 2021.

Submissions from Respondent

15 7. The respondent submitted that the case proceed in the claimants absence and be determined by the Employment Tribunal or alternatively that the case be dismissed under Rule 47 of the Rules.

Decision

20 8. Having regard to the background to this case and in particular the failure by the claimant to comply with the Employment Tribunal order from the PH on 12 July 2021; the claimants non-attendance at the PH on 27 August 2021; the failure to comply with the unless order; the terms of the e mail from the claimant of 23 November 2021 and the attempts made to contact the claimant on the morning of 24 November 2021 the Employment Tribunal conclude that
25 this was a case where it was appropriate to dismiss the claim under Rule 47.

9. In any event the unlawful deduction claim has been dismissed in accordance with the terms of the order from the Preliminary Hearing on 27 August 2021 as there was no compliance with the terms of that order.

5

Employment Judge: S Neilson
Date of Judgment: 24 November 2021
Entered in register: 26 November 2021
and copied to parties

10