



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100361/2021 Hearing at Edinburgh on 26 November 2021

Employment Judge: M A Macleod

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Mr M Steto

**Claimants
Not Present and
Not Represented**

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Thomas Venclik

Advance Contracting Solutions Limited

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimants' claims are struck out on the basis that they have failed to comply with the Tribunal's Order of 20 October 2021; and failed to pursue their claims before the Tribunal.

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REASONS

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1. The claimant presented a claim on 23 January 2021 to the Employment Tribunal in which he complained, on behalf of himself and another claimant, Thomas Venclik, that he suffered unlawful deductions from his wages. He himself also complained that he had been unfairly dismissed and discriminated against on the grounds of religion or belief.

2. The respondent submitted an ET3 in which they resisted all claims made by the claimants.
3. A Hearing was listed to take place on 26 November 2021 at the Employment Tribunal office in Edinburgh, and parties were notified by a Notice of Hearing issued to them on 28 October 2021.
4. On 26 November 2021, neither party attended.
5. The respondent's agent, Mr Critchley, sent an email to the Employment Tribunal at 9.16am on 26 November in which he advised that there had been an administrative error on the respondent's part, and as a result, requested that he be set up to attend the hearing by video conference. I instructed the clerk to advise him that it was too late to make such a request, but that it was open to the respondent to seek a postponement of the hearing.
6. He then emailed at 9.59am confirming the respondent's request for a postponement. He explained that due to an error by them they had not received email notifications from the Tribunal about the case due to their failure to forward emails from the account of Ms Grace Webber who was on short term secondment with them. As a result, they only became aware of the hearing when their clients contacted them, having been approached by a legal firm seeking to obtain business.
7. The claimants did not attend, nor were they represented. No communication had ever been received by the Tribunal from Mr Venclik, and all representations had been made through Mr Steto. The clerk on my instruction, telephoned Mr Steto at 10.05am approximately. He told her that he was at work, that he thought that the hearing would be by video conference and that he could not in any event attend. No statement was made about Mr Venclik.
8. Clearly, this is a highly unsatisfactory state of affairs. Neither party was in attendance or was represented at the hearing on the merits listed in October. There were some extenuating circumstances for the respondent's

agent, whose explanation I accept, but the claimant's position was inexplicable. Even if the hearing had been by video conference, the fact that he was at work appeared to me to indicate that he had no intention of pursuing his claim at this hearing in any event. The silence maintained by Mr Venclik does not allow me to reach any conclusions as to his intentions, but suggests strongly that he had no wish to pursue his claim.

9. I made the following determinations in this case as a result of the events of 26 November and the correspondence apparent to me from the Tribunal administration file.

(1) The Order of the Employment Tribunal (Employment Judge d'Inverno) dated 20 October 2021 struck out the claimants' claims of unfair dismissal and of discrimination on the grounds of religion or belief on the basis that they had not been actively pursued;

(2) That Order further, at paragraph (Third), ordered the claimant Mr Steto, both on his own behalf and that of Mr Venclik, to write to the Tribunal by 4pm on the 10th day after the date upon which a copy of that Order had been sent to parties, showing cause as to why the remaining complaint of unauthorised deductions from wages should not be struck out for non-compliance with an Order of the Tribunal and separately by reason of the claims not having been actively pursued; and that if that Order were not complied with by that date, the claims would be dismissed without further Order.

(3) Therefore, there being no response to that Order (Third) dated 20 October 2021 (other than an email on 25 October 2021 from Mr Steto asking whether he needed to do anything further, which was followed by a reminder by the Tribunal of the Orders requiring compliance), the claimants have failed to comply with the Order of 20 October 2021; and further have failed to pursue their claims in any meaningful way. Their lack of substantive response to the Order and to the Tribunal's correspondence, and their failure to

attend the hearing of 26 November 2021, make clear that they have not taken any steps to pursue their claims.

(4) In that light, the claimants' claims are hereby struck out on the grounds that they have failed to comply with the Tribunal's Order of 20 October 2021, and further failed to pursue their claims.

(5) As a result, the respondent's application for postponement of the hearing is granted, but only to the extent that their non-attendance at the hearing of 26 November 2021 is excused by the Tribunal; and in any event, the claims now being struck out, there is no further requirement for postponement or adjournment as the proceedings are now at an end.

Employment Judge: Murdo Macleod
Date of Judgment: 26 November 2021
Entered in register: 03 December 2021
and copied to parties