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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111327/2021 (V)

Held in Glasgow by Cloud Video Platform (CVP) on 24 November 2021

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Employment Judge Murphy

Mr B McGreish

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**Claimant
Not present and
not represented**

MCP Contracting Ltd

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**Respondent
represented by
Ms S Morgan,
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Judgment of the Employment Tribunal is that the claim is dismissed.

REASONS

1. The Claimant brings a claim of unauthorised deductions from wages in relation to a week's pay in July 2021. He failed to attend or be represented at the hearing. A notice of hearing was sent to the claimant on 15 September 2021 with the hearing fixed for 24 November 2021. The notice explained that any application for a postponement should be made as soon as possible and should be copied to the other party. The notice sign posted by hyperlink the Presidential Guidance on Postponements which applies in Scotland.
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2. The claimant sent an email in response to the Notice of Hearing, asking "what is this?" This prompted the Tribunal to write to the claimant to confirm his email address with him, given the query received. On 12 October 2021, the claimant responded. He confirmed the email address was correct and that he was happy to move on with the Tribunal process. On 21 October 2021, the Tribunal wrote to the parties to confirm neither the claim nor response had been dismissed on initial consideration and that the case would proceed to the final hearing on 24 November 2021 .
3. On 3 November 2021, the claimant emailed the Tribunal and indicated that he was unhappy about contact from the respondent and his representatives. The claimant stated that he was not answering or having any communication with them. He did not copy in the respondent's representative. On 9 November, the Tribunal wrote to the claimant and reminded him of the requirement under Rule 92 of the Employment Tribunal Rules 2013 to copy all correspondence to the respondent's representative. The Tribunal informed the claimant that the respondent's representative was entitled to contact him about his claim.
4. On 11 November, the Tribunal wrote to the claimant to seek his comments on a document lodged by the respondent which the respondent alleges authorized a deduction from his wages. The claimant replied by email on that date: "don't know what I'm supposed to do Jordan Mcphail and mcp contracting owe me 1500 pounds cash...if power tools and equipment that was kept from me that the police know about". The Tribunal wrote to the claimant on 15 November to seek his clarification by return regarding whether there were criminal proceedings relating to his power tools and, if so, to provide details. He was reminded again of Rule 92. The claimant did not respond.
5. In anticipation of the hearing, the Tribunal Clerk emailed the claimant a number of times and tried to call him without success. On the morning of 23 November 2021, the claimant answered the Clerk's call. He told the Clerk he had just started a new job and was hesitant to ask for time off. He confirmed

he had received the Notice of Hearing and was aware it was scheduled for 24 November 2021. At 3.27pm the claimant informed the Clerk by phone that he was requesting a postponement as he could not get the time off work. The Clerk asked him to submit his request in writing. The claimant initially submitted a postponement request by text message to the Clerk's mobile phone and sometime later after repeated requests, he submitted an email. Neither the text nor the email was copied to the respondent's representative. The application stated that the claimant had started employment 8 weeks ago and could not get time off for the hearing.

6. The Tribunal informed the claimant by email on the morning of 24 November that his postponement application had been refused pursuant to Rule 30A(2). The Clerk had a subsequent call with the claimant who told him that he wasn't going to attend. The respondent and the respondent's representative attended the hearing.

7. The respondent's representative's application was for dismissal under Rule 47. Ms Morgan argued the claimant had ample notice of the hearing. He had refused to engage with the respondent's agents regarding preparation including in relation to the collation of a bundle of documents for reference at the hearing. The case should not be adjourned, she submitted, as there could be no confidence that the claimant would prepare appropriately for or attend any future hearing. She argued that the respondent should not be prejudiced by being put to the expense of attending a re-scheduled hearing.

8. After reasonable enquiries about the reasons for the claimant's absence, I considered all the information available to me. Consideration was given to whether it would be appropriate to proceed with the case in the claimant's absence or adjourn the hearing to a later date. Given the onus upon the claimant to prove his case, in the absence of any evidence to support his claim, I concluded there was little purpose in proceeding with the hearing in his absence as there was no reasonable prospect of any outcome other than dismissal of his complaint.

9. I considered whether it would be just in the circumstances and in line with the overriding objective to adjourn the hearing to a later date. I determined it would not and that the respondent's application for dismissal should be granted. The claimant had known of the hearing date since before he began his new employment but had not sought to arrange time off until the day before. Equally, he knew he had no arrangement with his employer to accommodate the time off but did not seek a postponement until late on the eve of the hearing. He paid no regard to the Presidential Guidance on Postponements which confirms that if a postponement application has not been copied to the other party, it will not be considered, except in exceptional circumstances. When informed the postponement had been refused. He made no application via email for the case to be adjourned and a new hearing fixed.

10. I also considered the claimant's refusal to engage with the respondent regarding hearing preparation and his omission to respond to the Tribunal's requests for clarification of his position, as set out in its letter dated 11 November 2021. I do not have confidence that the claimant would make necessary arrangements to ensure his attendance at a future hearing if the case were to be adjourned or that he would engage with the tribunal and, where appropriate, the respondent's representative to ensure that any such hearing, if attended, could run in an efficient manner. In the circumstances, including the cost and inconvenience to both the Tribunal and the respondent occasioned by the claimant's failure to attend today's hearing, I do not consider the overriding objective is served by expending further resource on adjourning the claim and fixing a fresh hearing. I dismiss the claim pursuant to Rule 47 of the Employment Tribunals Rules of Procedure 2013.

30 Employment Judge: L Murphy
Date of Judgment: 25 November 2021
Entered in register: 01 December 2021
and copied to parties

