



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 3327493/2019

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Held in Glasgow on 14 September 2020

Employment Judge L Wiseman

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Mr D McLachlan

Claimant

**No appearance and
No representation**

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Kwik-Fit (GB) Ltd

Respondent

**Represented by:
Mr A MacPhail -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to strike out the claim in terms of Rule 30(b) and (d) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on 11 December 2019, asserting he had been unfairly dismissed.
2. The respondent entered a response admitting the claimant had been dismissed for gross misconduct, but denying the dismissal was unfair.
3. The case was listed for a 3 day in-person hearing in Glasgow on 14, 15 and 16 September 2020.
4. The tribunal wrote to the claimant on 10 September 2020 asking him to confirm he was planning to attend the hearing and to confirm he and others in his household were free of the symptoms of Covid-19. The claimant responded to that email to confirm he would be attending and that he was symptom free.

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5. The claimant did not in fact attend the hearing this morning. The clerk phoned the mobile number on the claim form, but received no response.
6. Mr MacPhail, in the circumstances, made an application to have the claim struck out in terms of rule 37 (b), (c) and (d) of the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013 (the Rules).
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7. Mr MacPhail noted the respondent had, last week, sent various emails to the claimant in preparation for today's hearing. There had been no response from the claimant. Mr MacPhail submitted the claimant must have known of the dates for the hearing because he attended the case management preliminary hearing in July, and subsequently asked for the hearing to be in-person rather than by video conference.
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8. The claimant's email address was still active (the claimant had, for example, sent his schedule of loss from that address).
9. Mr MacPhail submitted the claimant had chosen to not attend today, and to remain silent in circumstances where he could have alerted the tribunal or the respondent to his non-attendance and the reason for it.
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10. The claimant had, in terms of rule 30(b) conducted the proceedings in a wholly unreasonable manner. He had, in terms of rule 30(c) not complied with the Orders issued at the case management preliminary hearing in July: he had failed to provide his witness statement. He had, in terms of rule 30(d) not actively pursued his case and this was evidenced by the fact he had not provided his witness statement and had not attended today.
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11. Mr MacPhail acknowledged the tribunal could postpone the hearing today, seek an explanation from the claimant and re-arrange the hearing, but he submitted there was a significant risk that this course of action would result only in the respondent being put to further time and expense.
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12. Mr MacPhail invited the tribunal to strike out the claim. Mr MacPhail wished to have it noted the respondent reserved its position regarding expenses.

13. I decided, having had regard to the fact the claimant has failed, without explanation, to attend the hearing today and having had regard to the respondent's submissions, to strike out the claim in terms of rule 30(b) and (d).

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Employment Judge: Lucy Wiseman
Date of Judgment: 14 September 2020
Entered in register: 16 September 2020
and copied to parties

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