



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4102338/2018**

**Heard in Glasgow on 22 June 2018**

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**Employment Judge: Mr. C Lucas (sitting alone)**

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**Miss Atlanta McDonald**

**Claimant**

**Not Present**

**Not Represented**

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**Lomond Fine Foods Limited**

**Respondent**

**Represented by:-**

**Mr P Brown-**

**Solicitor**

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**Judgment of the Employment Tribunal**

**(Issued in terms of Rule 47 as contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013]**

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The Judgment of the Employment Tribunal is that the Claimant's claim is dismissed in terms of Rule 47 as contained in Schedule 1 to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

**E.T. Z4 (WR)**

## REASONS

### Background

- 5 1. In a claim form presented to the Tribunal Office on 6 February 2018 -  
(hereinafter, "the ET1") - the Claimant alleged that the Respondent had  
discriminated against her on the grounds of disability. Later within the ET1  
she referred to it having been her "only reasonable conclusion" that she had  
been dismissed by the Respondent "due to my medical condition and  
10 potential malignant cancerous tumour, which is not yet established", her  
argument being that the Respondent "was now alarmingly well aware of my  
condition had a knee jerk reaction and grabbed pathetic feeble reasons to  
dismiss me".
- 15 2. The Claimant alleged in the ET1 that her employment had begun on 6 June  
2017 and had ended on 12 December 2017.
3. Although making it clear within the ET1 that she was claiming that the  
Respondent had discriminated against her on the ground of disability the  
20 Claimant provided neither the Tribunal nor the Respondent with specification  
of what the disability that she relied on was. Nor did she either provide  
specification of the statutory bases of the claims being made by her or seek  
to clarify whether the "medical condition" that she referred to in the ET1 was  
the same "condition" that she sought to identify as a "disability" when  
25 claiming discrimination on the ground of disability.
4. In a response received by the Tribunal office on 15 March 2018 -  
(hereinafter, "the ET3") - the Respondent disputed the hours-per-week  
claimed by the Claimant in ET1 as having been worked by her, disputed the  
30 gross and net pay figures alleged by the Claimant, denied the Claimant had  
worked out the paid notice given to her by it, disputed the commencement  
date of employment given by the Claimant in the ET1 and generally resisted  
the Claimant's claim in its entirety.

5. When submitting the ET3 the Respondent attached a paper apart which the tribunal has deemed to be part of the ET3 and which made it clear that the Respondent did not admit that the Claimant had a disability as defined by the Equality Act. The Respondent referred to the Claimant's claim that she had had "a potential malignant cancerous tumour" but called upon the Claimant "to produce medical evidence of this", argued that "at no point prior to the 10 December 2017 had this been disclosed to the employer" and pointed out that "the Claimant had admitted herself that this is not yet established".
6. The ET3 denied that the Claimant's employment had been terminated by the Respondent because of "any illness or condition from which she might be suffering". The Respondent argued in the ET3 that "the Claimant's employment was terminated by reason of unsuitability" at a time when she was in her probationary period and contended that "the Claimant's contract of employment states that "the employee will be on a probationary period of six months from the start of her employment" and "during this period the employer can terminate the employee's employment on one week's notice".
7. As long ago as 15 February the Claimant was asked to complete and return a preliminary hearing agenda by 30 March 2018 but, despite being reminded by the Tribunal Office of the need for her to do so, she has never returned a completed preliminary hearing agenda.
8. Various attempts have been made to convene a case-management-type preliminary hearing.
9. A preliminary hearing was scheduled to take place on 20 April but on 16 April the Claimant sent an email to the Tribunal Office seeking a postponement of it so that she might be able to have a representative attend. That application for a postponement had been made late, less the seven days prior to the scheduled preliminary hearing; moreover, it had not been copied to the Respondent. For those reasons an Employment Judge

refused that application for a postponement and information to that effect was sent to the Claimant by the Tribunal Office on 20 April.

- 5 10. Following that refusal of her application for postponement of the 20 April preliminary hearing the Claimant made a further application for postponement, this time asking that the hearing be postponed because she, the Claimant, was to attend hospital with a family member. That application was granted on the condition that the Claimant would “provide a written explanation as to what happened” and “a letter/confirmation document from  
10 the hospital”
11. The Claimant did not comply with that requirement that she provide a letter or other confirmation from the hospital about her having attended the hospital with a family member on 20 April, the only possibly relevant  
15 response from the Claimant being that on an occasion - (which, it seemed to the Tribunal, was a date other than 20 April) - her mother had been taken into hospital with suspected Sepsis.
12. The proposed preliminary hearing was rescheduled to take place at  
20 Glasgow on 22 June.
13. Mid-afternoon on 21 June the Tribunal Office received an email from a “Derek Malcolm”- (a person of whom the Tribunal Office had, and even now has no knowledge and certainly not a person disclosed to it as being the  
25 Claimant's representative) - stating “we have a case tomorrow at 2pm, where we are looking to postpone due to personal reasons. How do we go about this?”
14. Later in the afternoon of 21 June the Tribunal Office sought to make email  
30 contact with the Claimant or Mr Malcolm. Those attempts failed.
15. When the re-scheduled preliminary hearing called for hearing at 2pm on 22 June the Claimant was neither present nor represented. At the request of the Employment Judge the Tribunal Clerk searched the Tribunal's Hearing

Centre but was unable to find either the Claimant or anyone acting on her behalf present within it.

5 16. After a delay of some 10 minutes beyond its scheduled start time the  
Employment Judge began the (re)scheduled preliminary hearing -  
9 hereinafter, "the Preliminary Hearing") - and explained the Claimant's non-  
attendance to the Respondent's representative who, having considered the  
options - [options which included the issuing of an Unless Order in terms of  
10 Rule 38 as contained in Schedule 1 to the Employment Tribunals  
(Constitution and Rules of Procedure) Regulations 2013 - (hereinafter, "the  
Regulations") - , the possible issuing of a Deposit Order or Deposit Orders in  
terms of Rule 39 as contained in that Schedule to the Regulations, exercise  
by the Tribunal of the discretion afforded to it by Rule 47 as contained in that  
15 Schedule to the Regulations and even the possibility of the Claimant's claim  
being struck out in terms of Rule 37(1) (b),(c) or (d) as contained in that  
Schedule to the Regulations] - the Respondent's representative submitted  
that it would be appropriate, and in the circumstances of this case wholly in  
accordance with the overriding objective set out in Rule 2 as contained  
20 Schedule 1 to the Regulations, for the Tribunal to exercise its discretion in  
terms of Rule 47, a rule which states that, -

25 "If a party fails to attend or to be represented at the hearing, the  
tribunal may dismiss the claim or proceed with the hearing in the  
absence of that party. Before doing so it shall consider any  
information which is available to it, after any enquires that maybe  
practicable, about the reasons for the party's absence."

10 17. The Employment Judge accepted that a preliminary hearing is a "hearing"  
for the purposes of the Regulations and that Rule 47 is one of the rules  
contained in the Regulations which is "common to all kinds of hearings".

18. When presenting his argument that it would be more appropriate for the  
Tribunal to exercise its discretion under Rule 47 - (and bearing in mind the  
overriding objective set out in Rule 2) - the Respondent's representative

conceded that a decision to dismiss the Claimant's claim which was based on exercise of the discretion afforded by Rule 47 would enable her, if she so wished, to make an application in terms of Rules 70 to 72 as contained in Schedule 1 to the Regulations for reconsideration of that decision.

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19. After appropriate deliberation, and having taken into account the circumstances of this case, the Employment Judge resolved to exercise the discretion afforded to him by Rule 47 as contained in Schedule 1 to the Regulations by dismissing the Claimant's claim on the basis that she had failed to attend or to be represented at the hearing.

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20. Before drawing the hearing to a close the Employment Judge noted from the Respondent's representative that he had previously issued the Claimant with an expenses warning letter.

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### **The Relevant Law**

- The Employment Tribunals (Constitution under Rules of Procedure) Regulations 2013, particularly Rules 2, 37, 38, 39 and 47 as contained in Schedule 1 to those Regulations.

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### **Discussion**

21. For the reasons which should be apparent from what is said in the "Background" section of these Reasons the Employment Judge determined that it was appropriate and wholly in accordance with the Rules set out in Schedule 1 to the Regulations that the Claimant's claim should be dismissed in its entirety. The Claimant had failed to attend or to be represented at the Preliminary Hearing without providing the Tribunal with any information about the reasons for her absence. The Tribunal had made all reasonably practicable enquiries into the reason for the Claimant's absence. Having taken Miss McDonald's past history as the Claimant in this case - (not least her failure to comply with Orders and requests made by the Tribunal) - into account, the Tribunal was satisfied that, in the circumstances of this case,

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application of Rule 47 by dismissing the Claimant's claim is more appropriate than either making an Unless Order in terms in Rule 38 or issuing a Deposit Order in terms of Rule 39, more appropriate, too, than giving notice of its intention to strike out the Claimant's claim in its entirety in terms of Rule 37.

22. Hence the Tribunal's decision to dismiss the Claimant's claim in its entirety.

**Employment Judge: C Lucas**  
**Date of Judgment: 28 June 2018**  
**Entered in register: 02 July 2018**  
**and copied to parties**

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