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# EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr M Wilson

Peter Duffy Limited

**Heard: By telephone**

**On: 26 August 2021**

**Before: Employment Judge JM Wade**

**Appearance:**

**For the Claimant: No attendance**

**For the Respondent: Mr R McArdle (solicitor)**

## JUDGMENT

The claimant's complaints of unfair constructive dismissal (protective disclosure), and unlawful deductions from wages (sick pay) are dismissed upon his failure to attend or be represented at today's preliminary hearing, pursuant to Rule 47.

## REASONS

1 The claimant, a crane operator, has not attended for a private case management hearing today, having presented a claim form on 20 June 2021 from which the complaints above can be discerned. The claimant said he resigned after events concerning his undertaking of a task which he considered dangerous; the respondent's case is that he resigned on or around 8 May 2021, having said that he had been offered another job which he could not turn down. I was told today that the claimant has subsequently said he secured new employment on 26 July 2021.

2 Having read the file it is clear that the respondent's solicitor has been in touch with the claimant and written to ask for him to be clearer about the breaches of contract which he says entitled him to resign. He has not replied to those enquiries. There are no communications from him on the file other than the claim form.

3 Today, when he had not attended by 10.05 I asked our clerk to telephone him. He answered that call and confirmed to the clerk that he had the letter and all that he needed to dial in, and that he would do so. He apologised for his lateness. Ms McArdle and I then waited until 10.20. He had still not attended. I then discussed the actions available to me with Ms McArdle including continuing in the claimant's absence, considering the merits on paper, with the possibility of a deposit order for the claimant, issuing an unless order or strike out warning, or dismissing pursuant to

Rule 47. She contended firstly for dismissal. There is also the option of postponement.

4 Weighing the options available to me I took into account that there is a fundamental right in the interests of justice to be heard before a claim is dismissed, or more accurately to have a reasonable opportunity to be heard. The claimant has had that opportunity because he has had the hearing details in good time, he has had the opportunity to apply for a postponement and has not done so, and he has been reminded this morning by our clerk and indicated he would join.

5 The respondent has been put to cost and it has done all that it could have done to make today's hearing effective. The allegations the claimant makes are serious relating to health and safety and carry stigma - its witnesses no doubt bear the worry of that. I also take into account other Tribunal users who need their cases hearing and who are not well served by litigants who cause needless and wasted time and delay.

6 If misfortune has prevented attendance, after the call from our clerk, then the claimant has the opportunity to challenge this decision providing evidence of what intervened to prevent him attending, and the prejudice to him is therefore moderated. In all the circumstances of the case it is in the interests of justice to dismiss the claim. The claimant had not attended by the time the hearing terminated at 10.30am (or thereabouts).

**Dated: 26 August 2021**

Employment Judge JM Wade

JUDGMENT SENT TO THE PARTIES ON  
Date: 27<sup>th</sup> August 2022