



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4101708/2022**

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**Held in Glasgow on 16 June 2022**

**Employment Judge Murphy**

10 **Ms E Hamilton**

**Claimant  
Not present and  
not represented**

15 **Clever Clogs Nursery Ltd**

**Respondent  
Represented by:  
Ms C Devlin -  
Owner**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that all claims brought under claim number 4101708/2022 are dismissed pursuant to Rule 47 of the Employment Tribunal Rules 2013.

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### **REASONS**

1. A final hearing was fixed for 16 June at the Glasgow Tribunal. The claimant failed to attend or be represented at the hearing. The respondent was represented by its owner, Ms C Devlin.
2. It was ascertained through enquiries that a Notice of Hearing was sent to the claimant by on 5 April 2022. The claimant emailed the Tribunal on 7 April 2022 to say that part payment had been received from the respondent. She indicated she wished to continue the proceedings unless compensated further by the respondent. On 14 June 2022, the claimant emailed the Tribunal. She said she would like to “dismiss the hearing from going forward”. She said she had not heard from the respondent but would continue to “try and gain what [she was] ... owed from them”.

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3. On 15 June, the Tribunal wrote to the claimant asking her to confirm if she wished to withdraw her claim and explaining that, if so, the claim would be dismissed under Rule 52 of the Tribunal Rules. The Clerk also made various attempts to call the claimant to ascertain whether it was her intention to attend the hearing. The claimant sent a further email on 15 June to the Tribunal. In that email she advised simply that she was at work, that she would be working until 9 pm, and that she was unable to return the Tribunal's calls. She did not confirm she wished to withdraw her claim.
4. On the morning of 16 June 2022 before the hearing was due to begin, the Clerk attempted to call the claimant again. The claimant emailed the Tribunal shortly before 10 am. She advised that she had noted a missed call from the Tribunal. She advised she was in work until 9 pm with a break at 2 pm and was unable to take calls during her work. The hearing was scheduled to proceed at 11.30 am and had been allocated to last 2 hours.
5. I recounted the recent email correspondence to the respondent as the claimant had not copied her emails to them in accordance with Rule 92. In the circumstances, Ms Devlin sought dismissal of the claim under Rule 47 of the 2013 Rules. Ms Devlin confirmed that the respondent's position was that all sums due had now been paid to the claimant.
6. The factual position regarding the claimant's entitlements appeared, therefore, to remain in dispute. I did not consider that the overriding objective of dealing with cases fairly and justly would be served by proceeding with the hearing in the claimant's absence. The claimant has the onus of showing the alleged deductions or breach of contract and without leading evidence it appeared highly unlikely that the burden would be discharged. Nor did I consider that the overriding objective would be served by granting a postponement of the hearing. Based on the correspondence received from the claimant, I assessed there was a significant risk that she would not attend any re-arranged hearing if it conflicted with her work commitments.
7. Although the claimant has not issued an unequivocal withdrawal of her claims, her email of 14 June 2022 showed, at best, an ambivalence about pursuing

5 them. She did not meet the Tribunal's enquiry regarding whether she wished to withdraw with a direct confirmation or refutation. Nevertheless, she has declined to attend the hearing which she knew to be taking place. She has likewise declined to engage with the Tribunal in a meaningful way regarding her intentions.

- 10 8. Taking all relevant circumstances into account, I dismissed the claimant's claims pursuant to Rule 47 of the Employment Tribunals Rules of Procedure 2013. The claimant may apply for reconsideration of this judgment if she believes it to be necessary in the interests of justice within 14 days of the date it is sent to the parties. Rules 71 – 72 of the Employment Tribunal Rules of Procedure 2013 set out the requirements for any such application and the process that will be followed. On reconsideration, the decision to dismiss the claim for compensation for unfair dismissal may be confirmed, varied or revoked. If it is revoked, it may be taken again.

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20 **Employment Judge: L Murphy**  
**Date of Judgment: 17 June 2022**  
**Entered in register: 22 June 2022**  
**and copied to parties**