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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102135/2022

Final Hearing Held in Edinburgh (by CVP) on 13<sup>th</sup> February 2023

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Employment -Judge B Beyzade

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**Mr. K Melville**

Claimant  
Not present and  
not represented

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**Raven Automotive Ltd**

Respondent  
Represented by:  
Mr A.G. Baird,  
Director

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

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1. The claimant being neither present nor represented at a point in excess of two hours after the time set for Final Hearing and there being no answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with him and no reply to the email sent to him from the Clerk to the Tribunal at 10.53am; on the respondent's application made at the Bar, the Tribunal dismisses the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

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1. The claimant lodged a claim for unfair dismissal, notice pay, holiday pay and other payments on 15 April 2022, which the respondent defended.  
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2. The claimant indicated on his Claim Form that he would be able to take part in a hearing by video.
3. On 23 June 2022 Employment Judge Hoey issued directions to the parties and parties were accordingly directed to exchange documents 28 days before the hearing, to prepare a File of Productions 14 days before the hearing; and the claimant was required to provide details of financial loss within 14 days from the date of the order.  
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4. The hearing that was listed previously on 15 and 16 August 2022 was postponed following the claimant's applications dated 08 August 2022.  
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5. On 15 November 2022, the claimant applied to postpone the Final Hearing which was listed on 29 and 30 November 2022. The basis for that application which was set out in the claimant's email dated 15 November 2022 as follows, *"Hi would it be possible to reschedule case due to working away of shore, would not be able to guarantee phone signal to take part in the tribunal"* The claimant's postponement application was granted on the grounds that the claimant was offshore and will be unable to participate in a hearing by Cloud Video Platform ("CVP"), no objections having been received from the respondent.  
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6. Within the same correspondence from the Tribunal, listing stencils for the Final Hearing were sent to the parties. Parties were requested to complete their listing stencils and to return the form by 05 December 2022.  
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7. The Tribunal sent further correspondence to the parties on 12 December 2022 advising that the Tribunal had not yet received a reply and that if parties did not respond by 19 December 2022, the final hearing may be listed based on

judicial availability. A letter was sent from the Tribunal to the respondent on 28 December 2022 advising that if the respondent did not reply by 06 January 2023 the hearing will be listed on the claimant's availability.

5 8. Notice of Hearing was issued to parties on 16 January 2023.

9. On 20 January 2023, the claimant made an application to postpone the Final Hearing. His application stated *"Hi. Recently received dates for upcoming hearing. Would it be possible to move hearing a couple of weeks forward to march 06 -07. Due to recent work commitments i will be leaveing my home address next Tuesday 24th for 25days. As i am working off shore could not guarantee phone signal. So would not be able to take part in video calls."*

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10. Employment Judge MacLeod refused that application on 09 February 2023.

15 The refusal notice sent to the parties stated:

*"The Employment Judge also notes that the claimant has made a request to postpone the Hearing due to commence on 13 February 2023. The claimant has been granted two previous requests to postpone this Hearing, the last of which, on 15 November 2022, was made due to his being away offshore for work. In that email he assured the Tribunal that any time after Christmas would be suitable for him. Now the claimant proposes that the Hearing of the case should be delayed further, because he is unable to attend due to a requirement to work offshore."*

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*Employment Judge Macleod refers to Rule 30(3) of the Employment Tribunals Rules of Procedure 2013, which state that where a Tribunal has ordered two or more postponements of a hearing in the same proceedings on the application of the same party and that party makes an application for a further postponement, the Tribunal may only order a postponement on that application where all parties consent to the application, where the application was necessitated by an act of another party to the Tribunal proceedings or there are exceptional circumstances."*

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*In this case, this is the third application made by the same party; the respondent has not replied, and has therefore not consented to the application; the application has not been necessitated by an act of another party to the proceedings; and accordingly the application may only be granted where there are exceptional circumstances."*

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*These are not exceptional circumstances. It is not known when the claimant became aware that he would be offshore at the date of the Tribunal, or indeed whether he accepted the work offshore after he had received the Notice of Hearing. The claimant had assured the Tribunal that any date after Christmas would be suitable, but now says that these dates listed by the Tribunal are not suitable."*

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*Essentially, the claimant seeks to delay the hearing of his own case. If he chooses to accept work rather than attend the Hearing, it cannot be deferred indefinitely. The Tribunal has to have good reason that there are exceptional circumstances before postponing the Hearing on this occasion, and the application does not set out exceptional circumstances."*

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*Accordingly, the claimant's application for postponement of the Hearing is refused. The case will proceed to Hearing on the scheduled dates."*

*In addition, the Hearing has been listed by Cloud Video Platform. If he wishes to proceed with the Hearing, he must make arrangements to be available throughout the Tribunal day, namely 10am until 4pm, on each of the 2 days allocated to the Hearing."*

*The case remains listed for hearing on 13th, 14th February 2023."*

- 5 11. The Clerk to the Tribunal contacted the claimant on 02 February 2023 confirming the dates of the Final Hearing and offered to arrange a CVP test video call in advance. The claimant did not reply to this email.
12. On 09 February 2023 the Clerk to the Tribunal contacting the claimant again to arrange a suitable date to arrange a suitable date to carry out a CVP test  
10 and the claimant replied on the same date advising that he had asked the Tribunal to reschedule the hearing, he was working offshore, and he will not have telephone signal to participate in the hearing.
13. On 10 February 2023, the CVP hearing log-in details were sent to the claimant and the Clerk to the Tribunal acknowledged that the claimant did not intend  
15 to attend the hearing. The claimant was advised the hearing was still scheduled to proceed. There was no further correspondence received from the claimant thereafter.
14. The case called for Final Hearing at Edinburgh by CVP on 13 and 14 February 2023 at 10.00am.
- 20 15. The respondent's representative, Mr A.G. Baird (Director) was in attendance.
16. There was no appearance for or on behalf of the claimant.
17. The case file records that Notice of the date and time set down for Hearing was sent to the claimant on 16 January 2023 at the correspondence address provided by him to the Employment Tribunal for the purposes of receiving  
25 such communications. No return of the Notice of Hearing issued to the claimant has been received by the Tribunal.
18. On the sitting Judge's directions the Clerk checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Hearing since the correspondence sent to him by email on 10 February  
30 2023.

19. On the sitting Judge's direction the Clerk attempted to communicate with the claimant on the telephone number provided by the Claimant for that purpose, between 10.00-10.30am on the day of the Final Hearing. An initial voicemail message was left at 10.03am advising the claimant that he had not attended the hearing and he must make contact with the Tribunal. A further voicemail message was left thereafter advising the claimant if he did not log-in to the Hearing by 10.30am the Hearing will proceed in his absence. The claimant was also sent an email by the Clerk at 10.22am requiring the claimant to log-in and attend the hearing by 10.30am and in default of which the Hearing would proceed in his absence. I am also informed by the Clerk that attempts were made to carry out a CVP test in respect of today's hearing by emails sent to the claimant between 09 and 10 February 2023, but the claimant did not attend any appointment or respond to the emails to arrange an appointment.
20. The Tribunal sat at 10.43am and then adjourned briefly at 10.52am and sat again at 11.14am to afford the claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding his non-attendance. After a brief adjournment at 10.52am, the Tribunal reconvened at 11.14am. This was following receipt of an email from the claimant at 10.48am advising, "Hi susan unfortunately due to poor phone signal iam unable to make contact throught video calf". The claimant was sent an email at 10.53am by the Clerk communicating the sitting Judge's direction, "Employment Judge Beyzade has advised he will proceed with the hearing at 11am, if you have not attended". In the same email, the claimant was also provided with a reminder of the log-in details for the CVP hearing. The log-in details included details for logging in via web browser, smartphone/tablet and the claimant was also furnished with the telephone dial-in information.
21. At 12.06pm and on no further correspondence having been received from the claimant, and on the respondent's application the Tribunal dismissed the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* ("the ET Rules"). The respondent's representative submitted that the claimant had

5 been afforded three opportunities to attend the Final Hearing and following two previous postponements, he had failed to attend on the third occasion. He submitted that the respondent was entitled to finality in this matter, that all relevant payments had been made to the claimant, and that steps had been taken to close the respondent's company.

22. I explained to the respondent's representative that it will be open to the claimant to consider proceeding by way of Application for Reconsideration of the Judgment if he believes that there are grounds for him to do so.

10 23. I noted that the claimant applied for today's hearing to be postponed which was refused by Employment Judge MacLeod. I was not aware of any change of circumstances since that application was refused and in any event a further postponement application had not been made. Therefore, in all the circumstances, I did not consider it would be appropriate or in accordance with the requirements within Rule 30A of the ET Rules or the overriding  
15 objective to grant a further postponement.

24. The claimant did not attend today's hearing and Rule 47 of the ET Rules specifically deals with non-attendance at a hearing. I therefore considered the respondent's application under Rule 47 to be well-founded. I took into account the Tribunal's overriding objective (Rule 2 of the ET Rules).

2u */ confirm that this is my judgment and written reasons in the case of Mr. K Melville v Raven Automotive Ltd Case No 4102135/2022 and that I have signed the judgment by electronic signature.*

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**Employment Judge: B Beyzade**  
**Date of Judgment: 14 February 2023**  
**Entered in register: 16 February 2023**  
30 **and copied to parties**