



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111744/2021**

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**Held in Glasgow on 20 February 2023**

**Employment Judge L Wiseman  
Members N Elliot and J McCaig**

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**Ms Deborah Fairley**

**Claimant  
No appearance and  
No representation**

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**The Scottish Ministers**

**Respondent  
Represented by:  
Mr R Turnbull -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The tribunal decided to dismiss the claim.

**REASONS**

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1. The claimant presented a claim to the Employment Tribunal on the 16 October 2021 complaining of discrimination because of disability, breach of contract and failure to pay notice and holiday pay.

2. The respondent entered a response in which it denied the allegations of discrimination and breach of contract, and confirmed no further payments were due to the claimant.

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3. The complaints regarding payment of notice and holiday pay were dismissed in a Judgment dated 7 June 2022.

4. The complaints of discrimination because of disability and breach of contract were listed for a 5 day, in person, hearing. The parties were asked to provide details of their availability for a hearing and, having done so, the case was

- listed for hearing on the 20, 21, 22, 23 and 24 February 2023. A Notice of Final Hearing was sent to both parties on the 18 October 2022.
5. The claimant has twice referred subsequently to the dates of hearing being provisional, and has twice been informed that the dates of the hearing are the 20, 21, 22, 23 and 24 February 2023. These dates were again confirmed in a letter dated 18 January 2023.
  6. The claimant was also advised of the names of the respondent's witnesses and that their first witness would give evidence on Monday 20 February 2023.
  7. The claimant, by letter of the 26 January 2023, raised a number of issues which included seeking clarification whether her claim had been listed for hearing. The President responded to that letter on the 6 February 2023. The President referred, in the second paragraph on page 1 of the letter, to *"the final hearing that is listed on the 20, 21, 22 23 and 24 February 2023"*.
  8. The process followed to list the case for hearing was detailed on page 2 of the President's letter, which confirmed the Notice of Final Hearing had been sent to the parties on the 18 October 2022. The Notice confirmed the dates for the hearing were 20, 21, 22, 23 and 24 February 2023.
  9. The President's letter concluded by stating *"The final hearing of your case will take place on the 20<sup>th</sup> - 24<sup>th</sup> February 2023"*. It was then stated, in bold, *"For the avoidance of doubt, you are expected to be in attendance for each day of the hearing. If you fail to attend the hearing, the respondent may make an application for your claim to be dismissed under rule 47"*.
  10. The claimant did not attend the hearing today. The claimant sent an email to the Tribunal (and copied to Mr Turnbull) at 09.34 on the 20 February saying there had been *"no official confirmation - an email from the Listing process/office used by the Employment Tribunal to both parties that I was told at the hearing on the 22<sup>nd</sup> September 2022 would be received at least 14 days before the conditional dates. Every communication received from the Glasgow Employment Tribunal has continued to state the dates are still unconfirmed and are not from the Listing Process."* The claimant went on to

say that she was *“extremely disappointed that [my] claim remains unconfirmed for a listing currently”*.

11. Mr Turnbull made an application under rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for the claim to be dismissed because the claimant had failed to attend. He submitted the reason for absence was clearly stated in the claimant’s email of that morning, but the reason was incorrect because parties had received the Notice of Hearing in October 2022 and the dates of the hearing had been confirmed to the claimant on at least three occasions subsequently, including the letter from the President which was dated 6 February 2023.

### Decision

12. The tribunal retired to consider the application which had been made. The tribunal noted the terms of rule 47 which provide that *“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 enquiries that may be practicable, about the reason for the party’s absence.”*
13. The tribunal considered the information available to it, being the correspondence on the case file. The tribunal noted the issue of listing the case for final hearing was discussed with the claimant and the respondent’s representative at the case management preliminary hearing on the 22 September 2022. It was agreed a 5 day, in person, hearing would be fixed and parties were asked to confirm their availability for a hearing during the months of December, January or February 2023. The claimant confirmed her availability in an email dated 10 October 2022. The respondent confirmed its availability in an email dated 13 October 2022. The case was then listed for hearing.
14. A Notice of Final Hearing was sent to the claimant and the respondent on the 18 October 2022, confirming the dates for the hearing on the 20, 21, 22, 23 and 24 February 2023. The tribunal noted the claimant has not ever suggested she did not receive the Notice of Final Hearing.

15. The claimant sent an email dated 6 December 2022 in which she stated *7 am expecting a Hearing to have been listed and in January 2023 I expect to hear whether the provisional dates will proceed or if there will be a delay*". The Employment Judge directed that a response be sent to the claimant (letter of the 19 December 2022) which included a paragraph stating *"The parties were advised, by letter of the 18 October 2022, that a Final Hearing had been arranged for 20 - 24 February 2023. These are not provisional dates: they are the dates of the hearing. "*
16. The claimant, in an email dated 23 December 2022, again made reference to expecting to receive confirmation of the hearing dates. The Employment Judge directed that a response be sent to the claimant (letter of the 4 January 2023) which confirmed a telephone case management discussion would be arranged to discuss all outstanding issues and confirmed parties had been informed of the dates for the final hearing.
17. The claimant did not attend the telephone case management preliminary hearing which took place on the 13 January 2023. The Employment Judge issued a Note following that hearing (dated 18 January 2023) which confirmed the respondent would lead at the hearing and that the respondent's first witness would give evidence on Monday 20 February 2023, with the second witness appearing on the 21 February 2023.
18. The Note was sent to parties and in the covering letter to the claimant dated 18 January 2023 it confirmed the final hearing was listed for the 20, 21, 22, 23 and 24 February 2023.
19. The claimant subsequently sent her letter of the 26 January 2023, to which the President responded by letter of the 6 February.
20. The tribunal noted that a further letter had been sent to the claimant on the 16 February confirming the respondent's first witness should be present at 10am on Monday 20 February 2023.
21. We were satisfied, having had regard to all of the above correspondence, that the claimant had been made aware of the dates for the hearing of her case.

The Notice of Final Hearing confirmed those dates and, if there had been any doubt about whether those dates were “provisional” as suggested by the claimant, it had been confirmed on three subsequent occasions that the dates were not provisional, and were the dates when the hearing would take place.

5 22. We, in addition to the above, considered the terms of the letter from the President could not have been clearer in confirming *The final hearing of your case will take place on the 20th - 24th February 2023*”.

23. We also had regard to the fact the President concluded her letter by stating, in bold type, that the claimant was expected to attend each day of the hearing, and making it clear what could happen if she failed to attend.  
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24. The claimant did not reply to that letter and did not at any time during the intervening two week period correspond with the tribunal or produce her documents to the respondent in compliance with the Order contained in the letter of the 15 February 2023.

15 25. We did not consider any further enquiries of the claimant were necessary because the reason for her absence was clear.

26. The tribunal decided, having had regard to all of the above points, that the claimant has been made aware of the dates for the hearing and has failed to attend. The tribunal decided, given the circumstances set out above, to  
20 dismiss the claim.

25 **Employment Judge: L Wiseman**  
**Date of Judgment: 21 February 2023**  
**Entered in register: 21 February 2023**  
**and copied to parties**

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