



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000248/2023

Held in Dundee on 22 November 2023

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Employment Judge R McPherson

Ms Laurhyn Mill

**Claimant
No appearance &
Not represented**

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Keepsake Scotland Ltd

**Respondent
Represented by
Mr M Ramsbottom
Litigation Consultant**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The claim is dismissed under rule 47 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claimant failed to attend or be represented at the hearing.

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REASONS

Preliminary matters

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1. The claimant presented her claim to the Employment Tribunal on **31 May 2023**, following upon ACAS conciliation, which had commenced on **19 April 2023** and in respect of which ACAS certificate was issued **31 May 2023**.
2. The respondent entered its response ET3 on the respondent set out that it resists the claim including that the claimant had not sufficiently particularised her claim.

3. At the telephone **case management Preliminary Hearing** on 30 August 2023 at which the claimant attended, as noted at paragraph 8 of the Note issued to the parties 4 September 2023 (the September 2023) *“The claimant advised that she had already obtained her medical records and these were with a solicitor...”*.
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4. In the September 2023 Note, the Tribunal set out, a paragraph 10 to 11 it was agreed that *“it was agreed that a preliminary hearing would take place to determine the issue of whether or not the claimant was disabled on 22 October 2023. The hearing will take place in the Dundee office... The claimant indicated she would be giving evidence herself”*. (emphasis added)
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5. In the September 2023 Note, **Orders** were issued, summarised as follows:
1. confirming that the case *“shall proceed to a preliminary hearing to take place in person on **22 November 2023**”* (emphasis added); and
 2. Identifying that the claimant shall provide to the respondent copied to the Tribunal no later than **20 September 2023**:
 - a) Confirmation whether she is proceeding with her claim of unfair dismissal ... given her lack of qualifying service; and
 - b) Confirmation whether she intends to continue with her claim relating to whistleblowing, and if so provide full details of the protected disclosure she allegedly made to include, manner of disclosure, to whom it was made, the precise information disclosed; why she considers it to be protected, the nature of detriment and if she is claiming that she was dismissed as a result, and the matters which she considers shows a link; and
 - c) In respect of (s13 Equality Act 2010 [EA 2010]) whether the sole less favourable treatment relied
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upon is her dismissal and the identity of any comparator (or characteristic of any hypothetical comparator); and

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d) If the claimant relates to other than dismissal, full details of each event relied upon; and

e) In respect of (s15 EA 2010) discrimination arising full particular; and

f) In all case the nature of the “*something arising from her disability*” which she relies upon; and

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g) Those matters which she considers show linkage; and

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h) If the claimant is making a claim of indirect discrimination (s19 EA 2010), the provision, criterion or practice and why she considers this placed her at a particular disadvantage; and

i) If the claimant is making a claim of a failure to reasonable adjustments (s20, 21 EA 2010) the PCP which she claims put her at a disadvantage; and

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j) If the claimant is making a claim of harassment (s26 EA 2010) the details of each incident relied upon; and

k) If the claimant is making a claim of victimisation (s27 EA 2010) details of the alleged protected act and alleged detriment or detriments and

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3. Further if the claimant wishes to amend her claim to include sex and or age discrimination, provide full particulars.

4. If the claimant wishes to make a claim for notice pay provide full particulars.

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5. No later than by **25 October 2023** each party shall send each other documents they intend to rely upon.
 6. No later than **20 September 2023** the claimant shall produce a copy of her GP records to the respondent, copied to the Tribunal.
 7. No later than **20 September 2023** the claimant shall produce to the respondent, copied to the claimant, a disability impact statement.
 8. The September 2023 Note set out that either party may make an application for the Order to be varied or set aside, if the Order is not complied with the Tribunal may make an order for expenses or preparation time against the party in default and further the Tribunal make strike out the whole or part of the claim or response under Rule 37.

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6. On **7 September 2023** the Tribunal wrote to both parties with NOTICE OF PRELIMINARY HEARING confirming that the Tribunal had directed that there should be a preliminary hearing, and that the preliminary hearing will take place at Ground Floor, Endeavour House, 1 Greenmarket, Dundee, DD1 4QB on **22 November 2023**, 23 November 2023 at **10:00** or as soon after that time as the Employment Judge can hear it confirming that the Preliminary Hearing will be conducted in public and will determine the preliminary issue of whether or not the claimant was disabled at the relevant time.

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7. On **2 November 2023** the Tribunal wrote to the claimant intimating that it was considering referring the case to a Tribunal Judge to consider striking out the claim on grounds of non-compliance with the Order, there having been no response to Tribunal. The claimant was directed to set out any reasons for disagreeing in writing by 16 November 2023 or tell the Tribunal by 16 November 2023 that she wanted an Employment Judge to fix a hearing so that she could put forward her reasons in person. The claimant was also

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advised they must copy any communication to the respondent. No further communication was received, until 16 November 2023:

8. On **16 November 2023**

5 1. At 5:05 pm the respondent wrote to the Tribunal, copied to the claimant, setting out that it had not received *any* (subsequent) communication from the claimant in respect of this matter and in the absence of any such similar correspondence being received by the Tribunal and requested the Tribunal strike out the claimant's claim for non-compliance with the Tribunal order dated 4 September 2023. The respondent noted that the claimant has failed to provide Further and Better Particulars of her claim as set out in paragraph 2-4 of the case management notes dated 4 September 2023. It was noted that the case was listed for a Preliminary Hearing on 22 November 2023 and indicated that in the absence of the information the Preliminary Hearing was unable to proceed because of the claimant's "failure to provide this vital information."

10 2. At 6.07 pm the claimant emailed (only) the Tribunal "*Below you will find my medical records. Anything else I needed please let me know as I am doing this on my own and due to personal reasons and my mental state at this point and time (which I have previously mentioned) I'm finding it difficult to remember/ find if I needed anything else.*"

15 9. On **20 November 2023**, the Tribunal set out to both parties that in light of the response from the claimant (that being the provision of medical records) and the proximity of the Preliminary Hearing the issue of the application to strike out would be dealt with at the commencement of today's hearing.

20 10. The respondent attended via their litigation consultant representative for today's in person Preliminary Hearing for the 10 am start and provided a

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Bundle which included the medical records which the claimant had provided by email on 16 November.

11. There was no attendance by or behalf of the claimant. The Tribunal clerk attempted to contact the claimant unsuccessfully by mobile on the number provided on the ET1, thereafter the Tribunal clerk emailed the claimant, at 10.16 am asking claimant to let the Tribunal know by return if she would be attending or not. The claimant responded by email at 10.27 am *"I'm really sorry I wasn't aware it was 10 am I thought it was 2o'clock and I was under the impression it was still a phone hearing again. Could this be rescheduled as my head is everywhere at the moment and I will not be able to attend today."*

Decision

12. I have having regard to the claimant's express statement at the Preliminary Hearing on 30 August 2023 she had already obtained her medical records by 30 August 2023 and which she confirmed at that were with a solicitor who was considering the papers in the case, the confirmation at the Preliminary Hearing that today's Hearing would in person at that hearing and further confirmed in the Note; the Tribunal's notification to the parties of today's in person hearing on 7 September 2023; the claimant's notified failure to comply with the Tribunal's Orders sent to the parties on 4 September including provision of Order 7 Disability Impact Statement, other than late production of the medical records (which she had confirmed she had obtained by 30 August 2023) on 16 November 2023, after the respondent's email of that day.
13. In all the circumstance the Tribunal has treated the respondent's application for strike out as a request that the case be dismissed under Rule 47 of the 2010 ET Rules on the ground that the claimant has failed to attend or be represented at the hearing. I have first considered all the information available to me, the representations on behalf of the respondent and the inquiries made by the Tribunal clerk on contacting the claimant as set out above. It is open to the claimant to apply for reconsideration within 14 days if appropriate. In all

the circumstances, I have concluded that it is in line with the over-riding objective to dismiss the claim under Rule 47 on the ground that the claimant has failed to attend or be represented. The claim is dismissed.

Employment Judge: R McPherson

5 **Date of Judgment: 23 November 2023**

Date sent to parties: 23 November 2023