



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000068/2023**

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**Held in Glasgow on 5 February 2024**

**Employment Judge McManus  
Members K Ramsay and A Grant**

10 **Ms H Lee**

**Claimant  
No appearance and  
No representation**

15 **Inverlochy Castle**

**Respondent  
Represented by:  
Mr D Ogilvy -  
Solicitor**

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

The claimant having failed to attend at the Final Hearing arranged to take place in Glasgow on 5 & 6 February 2024, her claim is dismissed under Rule 47 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

### **REASONS**

25 **Background**

1. Following a Preliminary Hearing on 27 October 2023, in terms of the decision promulgated by the Employment Tribunal on 6 November 2023:

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- The claimant's application to amend her claim to include a complaint of disability discrimination was refused.
- The claimant's application to amend her claim to provide further particulars of her race discrimination complaint was allowed.
- On 7 November 2023 parties were issued the Notice of the Final Hearing of the complaints of race discrimination and for unlawful

deductions from wages, scheduled to take place in Glasgow on 5 & 6 February 2024.

2. On 1 December 2023, the claimant applied for a postponement of that Final Hearing ('FH'). That application was made on the basis that the claimant had  
5 appealed the decision of 6 November 2023, and that the claimant would be in Korea on the arranged dates. The claimant subsequently provided proof of her travel arrangements and confirmed that her travel arrangements had been made before requesting a postponement of the FH. No explanation was provided by the claimant as to why she had made arrangements to be out of  
10 the country on the scheduled FH dates.
3. On 16 December 2023 the claimant's appeal of the PH decision of 6 November 2023 was received. On 24 January 2024, an application was made by the respondent's representative for the decision re that appeal to be expedited, given the scheduled dates for the FH. The application was referred  
15 to the Honourable Mrs Justice Eady DBE (President) in accordance with Rule 3(7) of the Employment Appeal Tribunal Rules 1993 (as amended). Parties were notified by decision issued on 26 January 2024 that no further action would be taken on the Notice of Appeal. The decision was that the Notice of Appeal discloses no reasonable grounds for bringing the appeal. Parties'  
20 attention was drawn to Rule 3(10) of the Employment Appeal Tribunal Rules.
4. On 30 January 2024, the claimant again sought postponement of the FH. Correspondence was sent to parties by the Employment Tribunal in the following substantive terms:

25 *"EJ McManus has considered the emails from the claimant of 30 January, and the respondent's representative's response.*

*Refusal of Postponement Application*

*It is noted that the claimant was informed of the decision of the EAT on 29 January 2024. Although an appeal may be made of this decision, it is understood that no appeal has been made as yet.*

*In circumstances where this Final Hearing ('FH') has been scheduled for 5 & 6 February, and that date has been known to parties for some time, that FH will not be postponed only on the basis that it is within the period when an appeal of the EAT's decision may be made.*

5 *The FH remains scheduled to take place in person at the Glasgow Tribunal Centre on 5 & 6 February 2024.*

*Any further request for a postponement of that hearing must clearly set out the grounds on which that postponement application is made.*

*Strike Out Warning*

10 *The claimant has also been issued with a warning that her claim may be struck out on either / both of the following grounds:*

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  - *that the manner in which the proceedings have been conducted by the claimant has been unreasonable in terms of rule 37(1)(b) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.*
  - *the claimant's noncompliance with Case Management Orders issued by Tribunal, in terms of rule 37(1)(c) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.*
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  - *The basis for the strike out warning are the circumstances referred to in the respondent's representative's email of 30 January 2024. In summary:*
    - *The FH was scheduled at the Preliminary Hearing ('PH') on 27 October 2023.*
    - 25 • *At that PH proceedings were translated to the claimant's first language.*
    - *The FH dates were arranged in discussion with the parties re their availability.*

- *Notice of Hearing in respect of that FH on 5 & 6 February was issued on 7 November 2023.*
- *On 1 December 2023, the claimant requested a postponement of the FH, on the basis that:*
  - *An appeal to the EAT had been made in respect of the decision from the PH on 27 October 2023*
  - *the claimant would not be in the UK for February and the beginning of March 2024.*
- *On 11 December 2023, the claimant confirmed to the Tribunal that she had booked the flights to Korea on 30 November 2023, and made the postponement request on 1 December 2023.*
- *The claimant has provided no explanation why she made arrangements to be out of the country on the dates for the scheduled FH.*
- *At the PH the claimant's position was that she did not intend to call any witnesses at the FH.*
- *On 1 December 2023, the claimant stated that she did intend to call witnesses but they would require to give their evidence remotely via video as they would not be in the UK.*
- *The claimant has been asked to state the names of her intended witnesses and why their evidence is necessary and relevant to the issues to be determined by the Tribunal at the FH (with reference to the respondent's representative's proposed List of Issues sent to the claimant on 12 December 2023).*
- *To date, the claimant has not given the names of her intended witness, or why their evidence is necessary and relevant to the issues to be determined at the Final Hearing.*

- *The claimant has provided no evidence in respect of her mother's ill health (in respect of that being a reason why the claimant, prior to seeking a postponement of the FH, made arrangements to be out of the country in February and March 2024).*
- 5 • *The claimant has provided no evidence of her own ill health in respect of its relevance to matters on which the strike out warning is made.*
- *The claimant has not complied with Case Management Orders issued on 16 January 2024.*
- 10 • *The claimant has not provided confirmation that she has obtained the relevant authority allowing evidence to be taken from a country other than the UK or set out any steps she has taken to obtain such authorities.*

*The claimant has been given the opportunity to provide representations on why the claim should not be struck out. If the claimant wishes to provide any further written representations, these should be received by the Tribunal and the respondent's representative by 9am GMT on 5 February 2024.*

*Consideration on whether the claim should be struck out will be made as a preliminary matter at the FH on 5 February 2024.*

*It is the claimant's responsibility to obtain the relevant authorities in respect of any country outwith the UK. Appropriate contact details in the countries ought to be able to be obtained from an internet search."*

5. On 4 February an email was sent by the claimant to the Tribunal office and the respondent's representative. In this email, the claimant set out her objections to the claim being struck out. No further postponement application was made. No explanation was given as to why the claimant had booked travel to Korea while this FH was scheduled.

### **Relevant Law**

6. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, (the Procedure Rules) provides 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 reasons for the party's absence.

- 5 7. This case was dealt with throughout seeking to pursue the overriding objective of the Employment Tribunal, as set out at Rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('The Procedure Rules'). As set out in the PH decision promulgated on 6 November 2023, the duty to deal with cases fairly and justly is a duty of the Tribunal towards all parties before it. Rule 2 of the Procedure Rules states:
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*"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly.*

*Dealing with a case fairly and justly includes, so far as practicable -*

- (a) *ensuring that the parties are on an equal footing;*
- 15 (b) *dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) *avoiding delay, so far as compatible with proper consideration of the*  
20 *issues; and*
- (e) *saving expense.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and*  
25 *in particular shall co-operate generally with each other and with the Tribunal."*

**Decision**

8. Consideration was given to the circumstances referred to in the correspondence from the Tribunal to parties on 31 January (as set out above) and the content of the claimant's emailed reply of 4 February.
- 5 9. In her reply, the claimant did not make a further application for postponement of the FH scheduled for 5 & 6 February.
10. The claimant still has not provided an explanation why she made arrangements to be out of the country on the dates for the scheduled FH.
11. The claimant has still provided no evidence in respect of her mother's ill health  
10 (in respect of that being a reason why the claimant, prior to seeking a postponement of the FH, made arrangements to be out of the country in February and March 2024).
12. The claimant has given no explanation for her non-compliance with Case Management Orders issued on 16 January 2024.
- 15 13. The claimant has not set out any steps she has taken to obtain authority from any country other than the UK from which she seeks that evidence be heard remotely in respect of her claim.
14. Contact was made by the Employment Tribunal office to the EAT seeking the position in respect of whether the EAT had received notification of a Rule  
20 3(10) appeal following Mrs Justice Eady's decision on the sift. No properly submitted appeal had been made as at the scheduled start of the FH on 5 February.

15. In all these circumstances, on application of Rule 47 of the Procedure Rules, the claim is dismissed because the claimant did not appear at the scheduled hearing on 5 February 2024.

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C McManus

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**Employment Judge**

5 February 2024

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**Date**

**Date sent to parties**

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