



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000667/2023

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Held in Glasgow via Cloud Video Platform (CVP) on 18 March 2024

Employment Judge Smith

10 **Ms L McKenna**

**Claimant
No appearance and
No representation**

The Actual Reality Trust

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**Respondent
Represented by:
Mr R Katz - Litigation
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Respondent's application to strike the claim out is refused.

REASONS

- 20 1. Today's preliminary hearing had originally been listed for 19 February 2024 but was postponed by Legal Officer Ellison on 2 February 2024, upon the application of the Claimant. In summary, the reason given by the Claimant in her postponement request was that she could not get time off work in order to attend.
- 25 2. At 15:52 on Friday 15 March 2024 – the working day immediately prior to the re-listed preliminary hearing – the Claimant emailed the Tribunal requesting another postponement. Again in summary, the reason advanced by the Claimant was that a colleague had called in sick and her new employer was in difficulty unless she went to work. That application was objected to by the
- 30 Respondent and refused by me on the papers, with reasons issued separately.
3. The Claimant did not attend today's preliminary hearing despite my refusal of her postponement application earlier in the day, the reasons for which she

received and acknowledged. The result of her non-attendance was that the claims remain unclear and further delay occasioned to the proceedings. This is highly unsatisfactory.

4. Mr Katz, for the Respondent, moved to have the claim struck out. I refused that application on the basis that strikeout is a draconian power and other, less draconian options are available in the Tribunal's range of powers in order to effectively deal with this situation, preserving the proceedings whilst recognising the injustice and unfairness caused to the Respondent by the Claimant's non-attendance.
5. Given what has happened in the proceedings thus far I have directed that a strikeout warning letter be sent to the Claimant, requiring her to show cause as to why her claim should not be struck out on the basis that it is not being actively pursued (as per **rule 37(1)(d)** of the **Employment Tribunal Rules 2013**).
6. Recognising that other cases also require the resources of the Tribunal, today's preliminary hearing will not be re-listed until the strikeout issue has been dealt with, and then only if the Claimant persuades me that I should not strike out her case.

P Smith

Employment Judge Smith

20 March 2024

Date
22 March 2024

Date sent to parties