



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100004/2024

Held in Glasgow on 22 April 2024

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Employment Judge S MacLean

Mr J Case

**Claimant
No appearance and
No representation**

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Arnold Clark Automobiles Limited

**Respondent
Represented by:
Mr G McQueen -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claim is dismissed under rule 47 of the rules contained in schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for failure to attend the public preliminary hearing.

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REASONS

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1. This case was listed for a public preliminary hearing in person on 22 April 2024. The respondent was represented by Mr McQueen, solicitor. There was no appearance by or for the claimant.
2. At my request the clerk unsuccessfully telephoned the claimant twice to ascertain his whereabouts. On the second occasion the clerk left a message requesting the claimant to contact the Tribunal's office. The clerk checked the Tribunal's email inbox. There was no email from the claimant explaining why he was not present.
3. On being advised of the position I spoke to Mr McQueen. He said that he had had no communication from the claimant since his email sent on 14 February 2024. Mr McQueen advised that on 19 April 2024 he had emailed

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to the claimant the file of documents that had been prepared for the preliminary hearing.

4. I then considered the information available to me. The claimant sent the claim form to the Tribunal on 2 January 2024. The claimant complains of unfair dismissal and seeks compensation. On the claim form he indicated his preference to be contacted by email but he could not take part in a hearing by video.
5. The response was accepted and sent to the claimant on 2 February 2024. In the grounds of resistance, the respondent say that the disciplinary allegations included making two racist comments. During the disciplinary process the claimant acknowledged that he may have made one of those comments and accepted that he made the other. On appeal, the claimant acknowledged making both comments. The claimant had already received a final warning for use of racist language. During the previous disciplinary process, the standards expected of the claimant were made clear to him. The respondent said that the claimant had no reasonable prospects of success and should be struck out under rule 37(1)(a) of schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 or alternatively the claimant should be require to pay a deposit of £1,000 as a condition of continuing with the claim on the basis that it has little prospect of success.
6. At initial consideration an Employment Judge asked the claimant to provide, within seven days, an explanation why he believed his dismissal was unfair given the respondent's comments in the grounds of resistance.
7. On 13 February 2024, an Employment Judge reviewed the case and noted that the claimant had not provided the further information. Notwithstanding this the Employment Judge did not dismiss the claim under rule 27. He listed a preliminary hearing to consider the respondent's applications and directed the claimant to provide the information sought.
8. On 14 February 2024, the claimant provided the information. He explained that the delay was due to not having a laptop or computer. The claimant borrowed his granddaughter's laptop. The claimant did not deny making the

5 comments but explained the context. From memory he thought the previous disciplinary record was in 2016/17 and should have been expunged. He said that he did not know that that he should not use the words in the workplace and that he had not received diversity training. He had long service and was near retirement. He felt that he was being rail-roaded out to get rid of expensive employees.

9. A notice of hearing was issued on 14 February 2024 confirming the time and place of the in person preliminary hearing. A revised notice of hearing was sent on 22 February 2024 clarifying that the preliminary hearing would be in public. The date, time and place of the preliminary hearing remained unchanged.

10. I checked the email address of all recent communications and was satisfied that it was the same email address to which the Tribunal had been corresponding with the claimant since he presented the claim form. There was no reason to believe that the claimant was unaware of the preliminary hearing. While I appreciated that the claimant did not have a laptop or computer he has been communicating with the Tribunal by email, presumably on his mobile phone, and that was his preferred means of doing so.

11. The preliminary hearing was in person to accommodate the claimant and Mr McQueen had emailed the claimant as recently as 19 April 2024.

12. Mr McQueen was present and had prepared hard copies of the documents for the Tribunal and the claimant. The respondent was ready and able to proceed.

13. I concluded that the claimant knew or at the very least ought to have known about the preliminary hearing today and had had no intention of attending.

14. In these circumstances, I decided that the claimant's claim should be dismissed under rule 47 of the rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for failure to attend the hearing.

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S MacLean

Employment Judge

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22 April 2024

Date

Date sent to parties

24 April 2024

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