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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4107472/2019**

**Held at Dundee on 21 October 2019**

**Employment Judge I McFatridge**

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**Mr D McLean**

**Claimant  
Not present or  
represented**

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**Quality Pork Processors Limited**

**Respondent  
Represented by  
Mr Stevens  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the claim is dismissed. The claimant shall pay to the respondent the sum of One Thousand, Seven Hundred Pounds (£1700) in expenses.

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## REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been automatically unfairly dismissed by the respondent. The claimant indicated that he had been dismissed by the respondent following a disciplinary hearing held on 21 December 2018 and that the effective date of termination of his employment was 28 December 2018. The claimant submitted his claim to the Tribunal on 26 June 2019 following early conciliation which had commenced on 28 March 2019, the ACAS certificate being issued on 5 April 2019. The respondent lodged a response in which they denied the claim. It was their position that in any event the claim was time barred on the basis that the limitation period to present the claims in the case expired on 27 March 2019 which was the day before the claimant commenced early conciliation. In any view the claim was submitted out of time. A preliminary hearing was fixed to deal with case management and took place on 29 August 2019. Following that hearing a hearing was fixed in order to deal with the issue of time bar and the claimant's representative was ordered to provide the respondent with a note of argument setting out the legal and anticipated factual basis of the claimant's position on time bar. The claimant's representative produced this some days after the initial date fixed for its production. It was indicated that the claimant would be arguing that it had not been reasonably practicable to submit the claim within the initial time limit.
2. Shortly before the date fixed for the preliminary hearing the claimant's representative indicated that he was no longer acting. The Tribunal sent an e-mail to the claimant on 17 October 2019 asking him if he still intended to proceed with the hearing on 21 and 22 October 2019. No response was received from the claimant.
3. On the morning of 21 October the respondent's representative appeared along with a member of the respondent's staff who was instructing him. The respondents were ready and willing to proceed and lodged a bundle of productions. There was no appearance by the claimant. The Tribunal clerk telephoned the claimant using a telephone number we had obtained from the claimant's previous representative. The telephone number went

to voicemail. The claimant had not appeared by 10:30 and I commenced the hearing.

4. The respondent's representative moved that the claim be dismissed and that he was seeking expenses. He indicated that the respondent would  
5 require to pay £1700 in respect of the abortive fees of the hearing fixed for 21 October.

### **Discussion and decision**

5. Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states

10 "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."

- 15 6. In this case there was no information before me as to the reason for the party's absence. With regard to the subject matter of the hearing it was clear to me that on the face of it the claim was time barred. It had been submitted outside the initial three month statutory period. I understood from the note of argument provided by the claimant's previous  
20 representative that the claimant intended to argue that it had not been reasonably practicable to him to lodge his claim within the initial three month period. The burden of proof is on the claimant in those circumstances. Given the claimant's non-appearance it appeared to me that it was inevitable that the claim should be dismissed. It would simply  
25 not be possible for me to reach any other conclusion in the absence of the claimant appearing and leading evidence as to why it had not been reasonably practicable for him to submit the claim within the initial statutory period. I therefore indicated to the respondent's representative that I was prepared to dismiss the claim. The respondent's representative  
30 indicated that he would be seeking expenses. He indicated that the claimant would require to pay £200 for the abortive appearance on 21 October together with a £1500 instruction fee. The circumstance as to when a costs order or order for expenses should be made are set out in

Rule 76. It appeared to me that in this case the claimant had acted unreasonably in the way that the proceedings had been conducted. He had failed to turn up for the hearing, he had not contacted the Tribunal or provided any reason whatsoever for his failure to attend. If he had  
5 contacted the Tribunal in advance to say that he was not attending then considerable expense to the respondent could have been avoided.

7. I considered the question as to whether or not to make an award of expenses. In the circumstances, given that I had been given no explanation from the claimant I considered it appropriate to award  
10 expenses. I accepted the figure provided to me by the respondent's representative. I had no information before me as to the claimant's means. In the circumstances I considered that it was appropriate to order the claimant to pay the sum of £1700.

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**Employment Judge:**  
**Date of Judgment:**  
**Date sent to parties:**

**Ian McFatridge**  
**24 October 2019**  
**24 October 2019**

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