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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104632/2020

Preliminary Hearing Held in Glasgow (by CVP) on 13 September 2021

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Employment Judge B Beyzade

Mr. Gary Train

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Claimant
Not present and
not represented

GT Omega Racing Limited

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Respondent
Represented by:
Matthew Leake,
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The Judgment of the Tribunal is that:

1. The Claimant being neither present nor represented at a point in excess of one hour after the time set for Final Hearing and there being no answer on the telephone number furnished by the claimant for the purposes of the Tribunal communicating with him and the claimant not having otherwise
30 communicated with the Tribunal; on the respondent's application made at the Bar, the Tribunal dismisses the claim in terms of *Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

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REASONS

1. The claimant lodged a claim for unfair dismissal on 28.08.2020, which the respondent defended.
2. The respondent's title was amended to GT Omega Racing Limited by consent of both parties by order dated 04 May 2021 made by Employment Judge McManus. The Preliminary Hearing Listing on 11 May 2021 was therefore not required and it was postponed.
3. Listing stencils for the Final Hearing were sent to the parties on 05 May 2021.
4. Parties were requested by email dated 02 June 2021 to provide their views on a final video hearing and use of witness statements, in relation to both of which the parties were in agreement.
5. On 16 June 2021 Employment Judge McLean issued directions to the parties and parties were accordingly directed to exchange documents 28 days before the hearing, to prepare a Bundle of Productions 14 days before the hearing, to file and exchange witness statements 14 days before today's hearing; and the claimant was required to provide details of financial loss within 14 days from the date of the order.
6. On 21 June 2021 parties were advised that Employment Judge McManus directed that the case was to be listed for a final hearing for 3 days, on a date to be advised to the parties.
7. The case called for Final Hearing at Glasgow by CVP on 13, 14 and 15 September 2021 at 10.00am.
8. The respondent's representative, Mr Matthew Leakey (Solicitor) were in attendance.
9. There was no appearance for or on behalf of the claimant.

10. The case file records that Notice of the date and time set down for Hearing was sent to the claimant on 05 August 2021 at the correspondence address provided by him to the Employment Tribunal for the purposes of receiving such communications. No return of the Notice of Hearing issued to the claimant has been received by the Tribunal.
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11. On the sitting Judge's directions the Clerk checked and confirmed that no contact had been made by the claimant with the Tribunal in connection with the Hearing.
12. On the sitting Judge's direction the Clerk attempted to communicate with the claimant on the telephone number provided by the Claimant for that purpose, between 10.00-10.30am on the day of the Hearing. A voicemail message was left advising the claimant if he did not log-in to the Hearing by 10.30am the Hearing will proceed in his absence. The claimant was also sent emails by the Clerk at 10.32am and 10.35am requiring the claimant to log-in and attend the hearing by 10.40am and in default of which the Hearing would proceed in his absence. I am also informed by the Clerk that attempts were made to carry out a CVP test in respect of today's hearing by emails sent to the claimant between 06 September 2021 and 10 September 2021, but the claimant did not attend any appointment or respond to the emails. Additionally the respondent sent an application to the tribunal yesterday in respect of today's hearing and that application on my direction was copied to the claimant this morning at 09.28am advising him that the respondent was directed to make its application at today's hearing at 10.00am.
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13. The Tribunal sat at 10.00am and then adjourned and sat again at 10.43am to afford the Claimant the opportunity to attend (though late) or to communicate with the Tribunal regarding his non-attendance. After a brief adjournment at 10.58am, the Tribunal reconvened.
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14. At 11.16am and on the assumption that by his unexplained non-attendance the claimant sought to communicate an intention not to insist upon his claim, and on the respondent's application the Tribunal dismissed the claim in terms
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of Rule of Procedure 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

- 5 15. If the Tribunal is wrong in that assumption it will be open to the Claimant to consider proceeding by way of Application for Reconsideration of the Judgment.
- 10 16. The respondent's representative also intimated that it intended to apply for a strike out. It appeared to the Tribunal that there was no particular advantage to the respondent of the strike out application, and that the matter could properly be disposed of under rule 47. I noted that the respondent applied for a postponement of today's hearing prior to learning of the claimant's non-attendance, which I was not required to determine in the circumstances. The claimant did not attend today's hearing and rule 47 specifically deals with non-attendance at a hearing. I therefore considered the respondent's application under rule 47 to be well-founded and it was unnecessary to determine the respondent's strike out application, which in any event was not particularised in any or any sufficient detail. The Tribunal took into account its overriding objective (Rule 2).
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20 Employment Judge: Beyzade Beyzade
Date of Judgment: 13 September 2021
Entered in register: 17 September 2021
and copied to parties

25 *I confirm that this is my judgment and written reasons in the case of Mr. Gary Train v GT Omega Racing Limited Case No 4104632/2020 and that I have signed the order by electronic signature.*