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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110592/2021

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Hearing by Cloud Video Platform on 28 February 2022

Employment Judge M Kearns (sitting alone)

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Mr S Fowkes

**Claimant
Not Present and
Not Represented**

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Think Solutions Group Ltd

**Respondent
Represented by:
Ms R Mohammed -
Solicitor**

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JUDGMENT

The claim is dismissed under rule 47 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that the claimant failed to attend or be represented at the hearing.

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REASONS

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1 The claimant presented an application to the Employment Tribunal on 30 July 2021 in which he claimed unfair dismissal, notice pay and arrears of pay. The claim may have been presented out of time. The claimant did not provide employment dates on the ET1 form. However, he first notified ACAS under the Early Conciliation rules on 23 July 2021. The respondent presented a response in which it stated that the claimant had

entered an agreement with them to provide sales support from 1
November 2020 until 31 March 2021. The respondent averred that the
claimant had contracted with them on a self-employed basis and had
invoiced them through his company for consultancy work. The
5 respondent's case was that the arrangement had lasted five months and
ended on 31 March 2021. The respondent also alleged in their response
that the claimant had brought the claim vexatiously, knowing that he was
not an employee and that the claim had no prospect of succeeding. They
stated that the claimant had done the same to another of his clients.
10 Upon being asked for details, the respondent cited claim number
2601432/2021, brought by the claimant in the East Midlands
Employment Tribunal.

2 A Preliminary Hearing was fixed in the present case for 16 December
2021 to determine whether the claimant was an employee or a worker
and if he was an employee, whether he had the requisite two years'
15 qualifying service for his unfair dismissal claim. On 6 December 2021
the Tribunal Cloud Video Platform ("CVP") clerk contacted the claimant
by email asking to conduct a CVP test in preparation for the hearing. The
claimant did not respond. The clerk sent a reminder email on 13
20 December 2021. The claimant responded to this email stating that he
was in hospital with Covid and had been for some weeks, that he was
quite unwell and that he had forgotten about the hearing. He requested
a postponement. On 14 December 2021 the duty Employment Judge
postponed the hearing. The hearing was rearranged for today's date –
25 28 February 2022 and a Notice of Hearing with details of the CVP was
sent out to both parties by email on 21 December 2021.

3 During the week beginning 21 February 2022 the Tribunal's CVP clerk
sent three emails to the claimant requesting that he contact her to take
part in a CVP test in preparation for today's hearing. The claimant did
30 not respond. The clerk tried to contact the claimant on the telephone
number he had provided to the Tribunal but the number does not work.

The claimant failed to attend today's CVP hearing, despite the Notice of Hearing having been sent out to him.

4 The respondent attended today's hearing, represented by their solicitor,
Ms Mohammed. They requested that the case be struck out on the
5 grounds set out in their ET3. Having checked the Notice of Hearing and
the other correspondence on the file, it is clear that this hearing was set
down to address the issues of employment status and qualifying service
and that the respondent's application for strike out had been deferred to
be dealt with at a later stage if appropriate. Rule 37(2) provides that a
10 claim may not be struck out unless the party in question has had a
reasonable opportunity to make representations either in writing or if
requested by them, at a hearing. In the circumstances, I have treated the
respondent's submission as a request that the case be dismissed under
rule 47 on the ground that the claimant has failed to attend or be
15 represented at the hearing. I have first considered all the information
available to me and the clerk has attempted to contact the claimant as
set out above. The claim is dismissed.

20 Employment Judge: Mark Kearns
Date of Judgment: 28 February 2022
Entered in register: 04 March 2022
and copied to parties

25 *I confirm that this is my Judgment in the case of Mr S Fowkes v Think Solutions
Group Ltd 4110592/2021 and that I have signed the Judgment by electronic
signature.*