



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4111413/21

Held on 30 November 2021

Employment Judge N M Hosie

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Mr A Moraru

**Claimant
No Appearance**

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20 **Croft & Cairns Ltd**

**Respondent
Represented by
Mr D Mussard,
Director &
Mr R Duncan,
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that the claim is dismissed.

REASONS

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1. The claimant brought complaints of constructive unfair dismissal and for unpaid wages and holiday pay. His claim form was submitted on 14 September 2021. The claim was denied in its entirety by the respondent. After the usual procedures, a final "in-person" hearing was fixed for 30 November 2021 at the Aberdeen Tribunal office with a 10am start.

E.T. Z4 (WR)

2. On 4 November 2021 a “**NOTICE OF FINAL HEARING IN PERSON**” was sent to the parties by first class post. There was nothing to suggest that it had not been received by either party.

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Final hearing

3. On 30 November 2021, two of the respondent Company’s Directors were in attendance at the Aberdeen Tribunal office in good time for the start of the hearing. They had prepared for the hearing and were ready to proceed. An interpreter was also in attendance having travelled from Edinburgh to Aberdeen. However, there was no appearance by or on behalf of the claimant and there was no communication from him, in any way, to advise that he would not be attending.

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Rules of Procedure

4. Rule 47, in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, is in the following terms:-

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“47 Non-attendance

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.”

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5. In accordance with that Rule, an Aberdeen Tribunal clerk telephoned the claimant and was able to make contact with him at around 10.30am. He advised that he was at work in Derbyshire and would not be attending the hearing. He claimed that he thought that the hearing would be conducted “by telephone”. He claimed he had not received a communication from the Tribunal to the effect that the hearing would be “in person” and that his attendance would be required. He also claimed that he was expecting the

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hearing “to be virtual”. The Tribunal clerk asked the claimant to send an e-mail to the Tribunal, as a matter of urgency, to explain his non-attendance.

5 6. The claimant’s e-mail was received at 11:06. It was in the following terms:-
“Hi Sir, I don’t know I must to be today on Aberdeen on person the only e-mail what I receive was I can participate on video zoom with interpreter, for the moment im on Ashbourne Derbyshire for job, sorry but my English is not good, kind regards Antonel Ciprian Moraru.”

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7. I was not convinced by the claimant’s explanation for his non-attendance. The Notice of Hearing, which was sent to him on 4 November, was in clear, unambiguous terms: the hearing was to be “in person” in Aberdeen . This was in bold type and in block capitals in the letter heading. He had never been
15 advised that the hearing would be conducted either by telephone or “virtually”. Further, in a letter which he sent to the Tribunal, which was received on 18 October, the claimant advised that he did not have access to a computer or laptop which would be required if the hearing was to be conducted “virtually”, by video conference. Also, I could not understand how the claimant thought
20 that the hearing could be conducted while he was at work.

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8. I was mindful that English is not the claimant’s first language. However, having reviewed the file, I was satisfied that It had been made perfectly clear to him that the hearing would be “in person” and that his attendance would
25 be required. It appeared to me that the claimant was treating the case and the conduct of the hearing in a somewhat cavalier manner, without any consideration of the costs being incurred and the inconvenience to all concerned.

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9. In these circumstances, and having regard to the “overriding objective” in the Rules of Procedure, I decided to dismiss the claim.

	Employment Judge	N Hosie
	Date of Judgement	2 December 2021
5	Date sent to parties	2 December 2021