



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102225/2017**

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**Held in Glasgow on 6 September 2018**

**Employment Judge: Ian McPherson**

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**Mr Alexander O'Hara**

**Claimant  
Not present and  
Not represented**

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**HMRC Account Office Cumbernauld**

**Respondent  
Represented by:  
**Mr Andrew Gibson -  
Solicitor****

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that:

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- (1) The case having called for Case Management Preliminary Hearing, and the claimant not being in attendance or represented, but having submitted a withdrawal of his claim, the Hearing proceeded in the absence of the claimant, the Tribunal taking into account, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013,**
- 30 available information from the claimant, being his e-mails to the Tribunal of 5 September 2018, and oral submissions from the solicitor appearing for the respondents.

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- (2) In terms of **Rule 51 of the Employment Tribunal Rules of Procedure 2013,** the Tribunal noted the claimant's withdrawal of his claim, and having considered his emails, and he not having appeared to address the Tribunal on his wish to reserve the right to bring a further claim

**E.T. Z4 (WR)**

against the respondents, the Tribunal **granted** the respondents' application, in terms of **Rule 52**, dismissing the claim, which means that the claimant may not commence a further claim against the respondents raising the same, or substantially the same, complaint of unfair dismissal against the respondents.

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(3) Further, the solicitor for the respondents having intimated that the respondents may seek an award of expenses against the claimant, in respect of the late withdrawal of the claim, and on the basis of the claimant's unreasonable and vexatious conduct of these Tribunal proceedings, the Tribunal **allows** the respondents' solicitor, if so instructed by the respondents, to intimate to the Tribunal office, by e-mail, with copy sent to the claimant at the same time, as soon as possible, and certainly **within 28 days of the date of this Judgment**, a written application, in a Word document, not PDF, identifying, by reference to the appropriate rules of procedure within the **Employment Tribunal Rules of Procedure 2013 (Rules 74 to 84)**, the specific grounds for the application, the factors which the respondents rely upon in advancing their application for expenses, and specifying the amount of expenses sought, including an explanation of the basis of calculation for those expenses, and produce any relevant vouching documents.

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(4) If and when intimating any application for expenses against the claimant, the Tribunal further **orders** that the respondents' solicitor shall e-mail to the claimant, with a copy provided to the Tribunal office at the same time, a list of all the legal authorities which the respondents intend to refer to or rely upon in the course of their application for expenses, and include a hyperlink to the cited cases on ***Bailli***, or an equivalent free, online website, e.g. Employment Appeal Tribunal website. This will allow the claimant, as an unrepresented, party litigant, time before replying to the respondents' application to consider the relevant case law, read the authorities cited by the respondents, and decide whether he wishes to refer the Tribunal to any additional authorities not cited by the respondents.

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- (5) Thereafter, the Tribunal **orders** that, **within 14 days of intimation of any such respondents' application for expenses**, the claimant shall submit to the Tribunal office a written reply to the respondents' application, making any comment or objection that the claimant feels appropriate, addressing his grounds of resistance to the respondents' application for expenses, and addressing the claimant's ability to pay any such expenses, if ordered by the Tribunal, and lodge his reply with the Tribunal office ( by e-mail, with attached Word document, not PDF) copying his reply to the respondents' solicitor, by e-mail, at that time, for any comment or objection that the respondents feel appropriate, addressing the claimant's reply, and his statement of means and assets, **within 7 days of their receipt of the claimant's reply and statement of means and assets.**
- (6) The Tribunal further **orders** that, **within 14 days of intimation of any such respondents' application for expenses**, the claimant shall intimate to the Tribunal office, by e-mail, with copy sent at the same time to the respondents' solicitor, a statement of means and assets relating to the claimant, detailing and vouching his income and expenditure, and any capital assets or savings, so as to give the Tribunal and respondents' solicitor advance fair notice of the claimant's whole means, and his ability to pay, if any award of expenses is to be made against him by the Tribunal; and
- (7) Subject to written comments from both parties, **if and when the respondents make any such application, and if and when the claimant makes his reply**, the Tribunal notes and records that, if the respondents' application for expenses is opposed by the claimant, then it is the Tribunal's provisional view that the opposed application for expenses shall be dealt with by Employment Judge McPherson alone, in chambers, on the papers, having regards to parties' written representations, and that an Expenses Hearing in public before a full Tribunal would not be necessary, having regard to the Tribunal's overriding objective, under **Rule 2 of the Employment Tribunal Rules**

of Procedure 2013, to deal with the case fairly and justly, including the avoidance of delay, and the saving of expense, to both parties, and to the Tribunal.

## REASONS

5 **Introduction**

1 This case called before me, as an Employment Judge sitting alone, on the afternoon of Thursday, 6 September 2018, at 2.00pm, for a one-hour Case Management Preliminary Hearing ordered the previous day by Employment Judge Jane Garvie.

10 **Procedural History of the Claim**

2 The claim was presented by the claimant on 27 July 2017, accepted by the Tribunal on 31 July 2017, and served on the respondents, who lodged an ET3 response defending the claim on 28 August 2017. On 5 February 2018, it was listed for a 4 day Final Hearing.

15 3 That Final Hearing, assigned for 4 days from 15 May 2018, was discharged, on 15 May 2018, by Employment Judge David Hoey, as per his written Notes and Orders dated 16 May 2018, issued to both parties under cover of a letter from the Tribunal dated 22 May 2018.

4 That discharge had been occasioned by the claimant's then solicitor withdrawing from acting that day, and the discharge, which was not opposed  
20 by the respondents' solicitor, was to allow the claimant to seek alternative legal representation and / or assistance.

5 The Final Hearing listed to commence on 6 September 2018 had been assigned for the case's full disposal, including remedy if appropriate, as per  
25 Notice Hearing issued to both parties by the Tribunal on 16 July 2018.

6 On 29 August 2018, having considered correspondence from both parties from 22 to 27 August 2018, Employment Judge Lucy Wiseman refused the claimant's application for a Preliminary Hearing, and for a Witness Order.

7 In doing so, Judge Wiseman clarified, through a letter sent to both parties by  
the Tribunal, that, at the assigned Final Hearing, the claimant would have the  
opportunity to give evidence and also to question the respondents' witnesses,  
but his request for a particular witness was unnecessary, as the focus for the  
5 Tribunal would be on what the respondents did with a complaint, and how  
they investigated it, and not with what the complainer had done.

### **Background to this Preliminary Hearing**

8 In considering an e-mail of 5 September 2018 received from the claimant,  
sent at 11:06, with copy to Mr Gibson for the respondents, intimating a  
10 withdrawal of the claim under **Rule 51**, but requesting "**the right to bring a  
further claim**", Judge Garvie converted the Final Hearing in the case,  
assigned to start on 6 September 2018 and run for the 3 ensuing days, into  
this Preliminary Hearing, at 2.00pm, and cancelled the Final Hearing on 7, 10  
and 11 September 2018.

15 9 Judge Garvie's decision was intimated to both parties by email from the  
Tribunal clerk sent at 13:49 that afternoon, stating that the claimant's  
intentions were not clear. In response, the claimant emailed the Tribunal, with  
copy to Mr Gibson for the respondents, at 14:32, seeking to clarify his position,  
and referring to him being under extreme pressure, and in receipt of a fit note  
20 from his GP for one month.

10 That fit note was not produced to the Tribunal, nor did the claimant seek a  
postponement of the Final Hearing. The claimant also re-stated that he  
wished to withdraw his complaint, and have the opportunity to "**revisit**" it with  
the provision of documents that he stated were not yet in his possession. He  
25 made reference to withdrawing, "**without prejudice**", to allow him time for an  
Information Commissioner's Office complaint as regards alleged non-  
compliance by the respondents with subject access requests he says he  
submitted in August 2018.

11 That email from the claimant resulted in a further email to both parties, on  
30 Judge Garvie's instructions, sent at 15:57, stating that she had directed that  
the Tribunal's rules of procedure do not provide for withdrawal in the way that

was suggested by the claimant, and confirming that this Preliminary Hearing would still proceed at 2.00pm on 6 September 2018.

12 By further email to the Tribunal, with copy to Mr Gibson for the respondents,  
sent at 16:56, the claimant advised that his request to withdraw stood, and if  
5 Judge Garvie saw fit to hold the Preliminary Hearing, then he was not in a  
position to contest that decision, but he was confused as an earlier request  
by him for a Preliminary Hearing had been refused, leaving him in a  
“*confused situation*”.

### **Preliminary Hearing before this Tribunal**

10 13 When the case called at 2.00pm, on the afternoon of Thursday, 6 September  
2018, neither party was in attendance, nor represented.

14 The claimant was not in attendance, nor represented, and in those  
circumstances, the clerk to the Tribunal was instructed to make contact with  
the claimant, and ascertain his position.

15 15 Unfortunately, the clerk’s attempts to phone him, at the mobile phone number  
given on his ET1, were unsuccessful, so I instructed the clerk to send him an  
email, which was sent to him at 14:18, asking him to contact the Tribunal  
office, as I wished a telephone conference call to discuss his case, if he was  
not going to be in attendance.

20 16 As it happens, the respondents’ solicitor was not in attendance at the  
appointed start time of 2.00pm, so I had the clerk call him. He duly appeared,  
his office being only a short distance away, and he tendered his sincere  
apology to the Tribunal, for the oversight on his part, and, on his arrival,  
around 2.15pm, he was updated by the clerk as to the email sent to the  
25 claimant, and that I would propose to start the Hearing at 2.30pm.

17 It then being 2.30pm, Mr Gibson being present, and there having been no  
contact back from the claimant, the case was called, and Mr Gibson  
addressed me on behalf of the respondents.

### **Submissions for the Respondents**

18 Mr Gibson advised me that the claimant had not appeared here to present a  
legitimate reason for reserving the right to bring another claim, nor to explain  
why a dismissal of the withdrawn claim would not be in the interests of justice,  
as per **Rule 52**. He argued that dismissal in this case would be in the interests  
5 of justice, as it would stop the claimant, whom he described as being  
“**vexatious**”, from bringing another case against the respondents.

19 Further, Mr Gibson then referred to the claimant having brought the case, but,  
when it comes to the crunch, of going to Final Hearing, the claimant backs off,  
and there had been a similar situation with the discharged Final Hearing in  
10 May 2018, which, the case having been relisted, had put the respondents to  
further expenses, as Mr Gibson had had to re-prepare / refresh for this new 4  
day Final Hearing.

20 Finally, Mr Gibson stated that he sought a dismissal judgment, under **Rule**  
**52**, following on the withdrawal of the claim, and if the Tribunal was not minded  
15 to grant him a **Rule 52** judgment, he would issue a Costs Warning to the claim  
in respect of any fresh claim that might be brought against the respondents.  
If not a dismissal judgment, he sought Strike Out of the claim, and reserved  
expenses.

21 He further stated that, in his view, the claimant knows full well that he does  
20 not have a proper case, and that HMRC had issued the claimant with a “**cease**  
**and desist**” letter, given the claimant had set up a Facebook page, on social  
media, entitled “**The Uncivil Service**”, where he alleged the claimant had  
posted defamatory remarks about HMRC and its staff, and that caused the  
respondents to have real concerns about the claimant’s conduct of these  
25 Tribunal proceedings too.

### **Discussion and Deliberation**

22 The Tribunal noted that the claimant’s emails of 5 September 2018 did not  
seek a postponement of the Final Hearing, on account of his inability, to date,

to secure alternative legal representation, or on account of his unfitness, on medical grounds, to attend the Tribunal.

23 Further, despite Judge Garvie's request for clarification, while it appeared the  
5 claimant wished to withdraw his claim, under **Rule 51**, which he specifically  
cited, it was unclear on what basis, given his withdrawal of the claim, he  
wished to reserve the right to bring a further claim against the respondent,  
which might have made grant of a **Rule 52** dismissal Judgment inappropriate.

24 Arising from my discussion with Mr Gibson, on behalf of the respondents, the  
Tribunal noted the claimant's withdrawal of his claim, and I there and then  
10 orally granted the respondents' application, in terms of **Rule 52**, for a  
dismissal Judgment. I also dismissed the claim, under **Rule 47**, the claimant  
not having appeared to address the Tribunal on why a **Rule 52** Judgment  
should not be granted.

25 Mr Gibson stated that the respondents were fully prepared for this Final  
15 Hearing, with himself and witnesses organised, the 2 volume Joint Bundle,  
lodged in May 2018, in 2 large A4 white folders, with 23 documents extending  
to 620 pages.

26 Further, while he had managed to countermand 2 of his 3 witnesses, the 3<sup>rd</sup>  
having travelled up from Manchester to give evidence as his first witness, Mr  
20 Gibson stated that he understood, apart from the inconvenience caused by a  
late withdrawal, to him, his clients, and their employees as witnesses,  
expenses had been incurred by the respondents for pre-booked travel and  
accommodation, although it may be the respondents might be able to get  
some savings on cancellation of bookings.

25 27 He reserved the right to make an application for expenses, as per **Rule 51**. I  
stated that, in issuing written Judgment, confirming my oral decisions, I would  
include an appropriate set of Orders dealing with any expenses application, if  
he was instructed to make that application, and I have done so in this  
Judgment, including, in case they are required, consequential orders, and  
30 case management of how any application for expenses, if opposed by the  
claimant, as seemed likely, would be dealt with by the Tribunal.



**Close of Preliminary Hearing**

28 This Hearing concluded at 2.52pm, and I thanked Mr Gibson for his attendance and contribution, and proceeded to draft this written Judgment and Reasons for issue to both parties.

5 29 By way of postscript, I note and record that by email from the claimant, sent to the Tribunal at 15:54, but not copied to Mr Gibson for the respondents, the claimant provided his telephone number, but he simply stated he could not call the clerk as he had no credit. No further information was provided.

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15 Employment Judge: Ian McPherson  
Date of Judgment: 07 September 2018  
Entered in register: 13 September 2018  
and copied to parties