



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr M Shutt

Medinova Limited

**By Videolink**

**On: 17 December 2020**

**Before: Employment Judge JM Wade**

**Appearance:**

**For the Claimant: No attendance**

**For the Respondent: Ms Duffy (solicitor)**

## JUDGMENT

The claimant's claim of unfair dismissal is dismissed upon his failure to attend or be represented at today's hearing, pursuant to Rule 47.

## REASONS

1 Today's circumstances are unusual. A hearing was arranged by videolink because of the Covid pandemic. The claimant has not attended in circumstances where it was very unlikely he would attend.

2 The claimant's unfair dismissal claim was presented on 9 June 2020 and a preliminary hearing took place by telephone before Employment Judge Cox on 20 August 2020. The issues were clarified, including that if the claim succeeded there would be an examination of whether the claimant engaged in blameworthy conduct such that any compensation should be reduced. A clear timetable was put in place to enable the parties to be well prepared for today.

3 At the point when the claimant was expected to exchange statements, on or around 29 November 2020, the claimant emailed the respondent's representative to say: he was now working for an NHS body which was very busy; he could not get time off for this hearing; he had wished to attend and represent himself but recognised that was not possible; he wished the trial to go ahead; he had provided a lot of evidence (physical, not just hearsay); and he was sure the right decision would be made. He thanked the representative for their work in preparing the hearing file.

4 The Regional Judge then directed that the hearing would proceed as listed because there was no postponement request. Today I have read a statement from Mr Porter, who was the respondent's HR Director, but has since changed employment. He dismissed the claimant. I have also read the associated papers in the hearing file. I have read the claimant's evidence including records of private

“whats app” exchanges between colleagues and friends, which exhibit embarrassing content.

5 The claimant’s case, having read what I have read, is not without difficulty; the arguable points had been identified in case management. If I were to have heard this case with the claimant present, he would undoubtedly have faced cross examination about those points, particularly that the respondent’s approach was reasonable in all the circumstances. He would have been cross examined about the allegations against him. That is not possible because he is not here. Nor is it possible for him to put the arguable points to Mr Porter.

6 While I could do that in the claimant’s absence, because the Tribunal first hears from the employer in these circumstances, it is fundamentally inequitable and contrary to the interests of justice that Mr Porter face those questions from an Employment Judge about a dismissal decision he made in good faith (for that much is very clear from the file), when the claimant is not here to see justice being done, nor himself to face the inevitable questions he would face. I am very grateful that Mr Porter has attended today so promptly.

7 Rule 47 provides that, where “a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of the party.” The respondent is content with a dismissal on his basis.

8 No person would criticise the claimant for not being able to have time off from a new NHS job in a COVID crisis. That is his reason for failing to attend, but he could have sought a postponement because this was known some weeks ago. Just as Mr Porter exercised judgment in dismissing him, he has exercised judgment in not seeking a postponement and leaving the matter in the hands of the Tribunal. The parties deserve finality in their dispute. In all these circumstances I consider dismissal pursuant to rule 47 to be the just course.

**Dated: 17 December 2020**

Employment Judge JM Wade