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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110725/2019

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Hearing held in Dundee on 22 November 2019

Employment Judge I McFatridge

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Mr S Hunter

**Claimant
Not present or
represented**

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ABG Transport Services Ltd

**Respondent
Represented by
Mr Gourlay,
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claim be dismissed.

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REASONS

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1. The claimant submitted a claim to the Tribunal in which he made a claim that he had suffered an unlawful deduction of wages. The respondent submitted a response in which they denied the claim. It was their position that the claimant was neither a worker nor an employee but was an independent self-employed contractor. It was their position that the

E.T. Z4 (WR)

Tribunal did not have jurisdiction. In addition, there appeared to be an issue regarding the identity of the purported employer in that the claimant had raised the claim against “ABG Legistics (Expert Legistics)” giving an address which was the address of the respondent firm ABG Transport Services Ltd. A preliminary hearing was fixed in order to deal with preliminary issues of the employment status of the claimant and the correct identity of the respondent. At the date and time fixed for the hearing Mr Gourlay of the respondent was present. He lodged a bundle of productions which included a copy of a signed agreement between the claimant and the respondent which bore to be a contract for services. It contained in paragraph 2 the phrase

“This is not a contract of employment but a contract for services.”

The respondent was ready to proceed with the hearing. The claimant did not appear. The clerk telephoned the claimant on the mobile telephone number he had provided in his claim form but this number was unobtainable and appeared to have been disconnected. The clerk telephoned the claimant at the landline telephone number given in his application form and spoke to someone who indicated that they were the claimant’s father. They stated that the claimant was not there but did not give any further information. I delayed the start of the hearing until 10:15 just in case the claimant had been delayed in traffic. There was still no appearance from the claimant. I then commenced the hearing. It appeared to me that on the basis of the documents provided by Mr Gourlay the Tribunal did not have jurisdiction to hear the case since the claimant was neither an employee nor a worker in terms of the Employment Rights Act 1996.

2. I observe that in terms of regulation 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 that if a party fails to attend or be represented at a hearing the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. I note that before doing so I am required to consider any information which is available to me after any enquiries that may be practicable about the reasons for the party’s absence. In this case I considered that the onus was on the claimant to demonstrate that the Tribunal had jurisdiction to

hear his claim. He had not appeared and he had not given any reason for his non-appearance. In those circumstances I considered it appropriate to dismiss the claim and I advised Mr Gourlay of that at the hearing.

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Employment Judge:
Date of Judgment:
Date sent to parties:

Ian McFatridge
27 November 2019
27 November 2019

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