

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4105566/2016**

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**Held in Edinburgh on 10 April 2017**

**Employment Judge: Iain F Atack - Sitting Alone**

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**Miss S Brown**

**Claimant  
In person**

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**Caledonian Heritable Ltd**

**Respondent  
Represented by:  
Miss Phillips, Solicitor  
instructed by Mr Arnott,  
Director**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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1. The respondent's request for a Deposit Order is refused.
2. The claimant's application that the response be struck out is refused.
- 30 3. The respondent's application that the claim be struck out is refused.

**Reasons**

1. The respondent made a request for a Deposit Order in terms of Rule 39; the  
35 claimant then made an application for strike out of the respondent's case in  
terms of Rule 37 and the respondents made an application for strike out of  
the claimant's case again in terms of Rule 37.

## **Deposit Order**

2. The basis upon which an Employment Tribunal can grant a Deposit Order is set out in Rule 39. The Tribunal is entitled to make a Deposit Order if it considers that any specific allegation or argument in a claim or response has little reasonable prospects of success.
3. The respondents submitted that there was little prospect of success in respect of the 3 claims made by the claimant and that her credibility was an issue. The claimant claimed the respondent was aware that she had been working for other organisations and that she had not tried to mislead the Employment Tribunal.
4. From the submissions made by the parties I could not conclude that the case had no reasonable prospects of success. Evidence would require to be heard in this case before such a conclusion could be reached. I refuse the application for a Deposit Order.

## **Claimant's Application for Strike Out**

5. The claimant gave 3 reasons for her request for strike out. These were (1) harassment of her witnesses; (2) Mr Arnott's investigation into her employment situation; and (3) that the respondent had lied to the Employment Tribunal regarding the scope of its investigations.
6. This application was made under Rule 37(1)(b) which entitles the Tribunal to strike out all or part of a claim or response on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious.

7. The respondent admitted that Mr Arnott contacted the company called IDI to obtain information about the claimant's past employment there but denied he had spoken to anyone other than Fiona Crosbie about the matter. It was accepted that he had spoken to the person who first answered the telephone but that was only with a view to ascertaining to whom he should speak and nothing of substance was discussed.
8. The respondent denied harassing any witnesses.
9. Having considered what both parties had to say I could not conclude that the respondent's conduct, so far as admitted met the test in Rule 37. So far as the unadmitted alleged conduct was concerned I was not satisfied it had taken place, purely on the basis of submissions. I did not consider that the requirements of Rule 37(1)(b) had been met and accordingly the claimant's application is refused.

### **Respondent's Application**

10. This application was also based on Rule 37(1)(b).
11. The basis of the application was that the claimant had misled the Employment Tribunal at the Closed Preliminary Hearing by failing to disclose that she had last worked for the Old Course Hotel in 2015 and failing to mention that she had worked for IDI.
12. It was also alleged that the witnesses whom the claimant wished to call would not speak to the allegations made by the claimant and in calling so many the claimant was taking disproportionate action.
13. The Schedule of Loss in the joint bundle was wrong as it did not disclose all of the claimant's earnings. As the claimant had known that, her actions made a fair trial impossible.

14. The claimant claimed she had answered honestly as she had received her last payment from the Old Course Hotel in April 2016. She accepted that payment however was not payment of wages but could represent either  
5 payment of tips or be a tax rebate.

15. She alleged she had not tried to mislead the Employment Tribunal and referred to documents B5 and B6 in the joint bundle to support that allegation.  
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16. She disagreed that any of her witnesses were unnecessary and felt all were relevant to her case.

17. Having considered the submissions made by both parties I concluded that  
15 the test in Rule 37(1)(b) had not been met and that it could not be stated that the conduct of the claimant was scandalous, unreasonable or vexatious. I did not consider that a fair trial was impossible as the case would be heard by a full Tribunal who had not previously been involved and would hear the evidence and be able to judge it for themselves. Accordingly I refuse the  
20 respondent's application for strike out.

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Employment Judge: Iain F Attack  
Date of Judgment: 10 April 2017  
Entered in Register: 10 April 2017  
30 and Copied to Parties