

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100154/17

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Held in Glasgow on 2 June 2017

Employment Judge: F Jane Garvie

10 **Miss Bronnie Reid**

**Claimant
In Person**

15 **Anita Bali**

**Respondent
No Appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that a second respondent namely Anita Bali t/a Kelvin Nursery be conjoined to the proceedings and the claim be served on the second respondent.

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REASONS

Background

1. In her claim, (the ET1) presented on 22 January 2017 the claimant seeks
30 outstanding pay which she alleges is due to her for the month of October 2016 in the amount of £983.42 which is the gross sum claimed. The claim is directed against the first respondent Anita Bali and below that is the address given of Kelvin Nursery at 105 New City Road, Glasgow G4 9JX. The claim was acknowledged by Notices dated 24 January 2017 giving a Final
35 Hearing date of 5 April 2017. The respondent was directed to provide a response, (the ET3) by 21 February 2017.

2. There was no reply. By letter dated 27 February 2017 I directed that the claimant should provide further information as to whether her claim was against Anita Bali t/a Kelvin Nursery.

E.T. Z4 (WR)

3. A reminder was issued on 10 March 2017 for reply by 17 March 2017.

4. On 21 March 2017 I was advised that there was a further claim against
5 Kelvin Nursery but that the respondent in that case was a company called
Cruse Investments Ltd t/a Kelvin Nursery which had been dissolved on 25
October 2016.

5. By letter dated 23 March 2017 the claimant was notified of this and asked
10 for her understanding of the correct name and to reply by 30 March 2017.

6. The claimant by email dated 23 March 2017 said that the name of the
nursery was Kelvin Nursery. In her email she wrote:-

15 *“The name of the nursery is Kelvin nursery which there is a notice on
the main entrance at the front of the building. Also to my attention
the nursery changed name and was previously named Small World.
Above the nursery building are flats.”*

20 7. This was referred to Employment Judge Mary Kearns who directed that the
Final Hearing for 5 April 2017 should be postponed. The claimant was
directed to provide copies of her contract, wage slips and any other
documentary evidence confirming the name of the respondent.

25 8. By Notices dated 29 March 2017 both parties were advised that the Final
Hearing had been postponed.

9. It is also appropriate to indicate that correspondence sent to the claimant
was always copied to the respondent for information.

30 10. By letter dated 10 April 2017 the claimant was informed that Employment
Judge Robert Gall had directed that if the correct company could not be

established it may not be possible to issue a Judgment. The claimant was asked to clarify the position by 24 April 2017.

11. By email of 10 April 2017 the claimant indicated that:-

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“As far as I am aware Anita Bali is the owner of the nursery (Kelvin Nursery). I was informed about an investor within the nursery with the name Amit Arora. As far as I know Kelvin Nursery is still opened and under the same name. When I worked there I wasn't issued an employment contract neither did I receive wage slip.”

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12. This was referred to Employment Judge Lucy Wiseman who directed that there should be a Preliminary Hearing to consider the identity of the respondent. This was notified by letter dated 18 April 2017.

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13. Notices for the Preliminary Hearing were then issued dated 27 April 2017 indicating that the Preliminary Hearing would take place on 2 June 2017 and the purpose of the Preliminary Hearing would be “Correct identity of the respondent.”

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14. As indicated, the claimant attended in person. Her mother was also present.

The Preliminary Hearing

25 15. The claimant gave evidence.

16. The Tribunal found the following essential facts to have been established.

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17. The claimant worked at Kelvin Nursery from 20 September 2016 until 31 October 2016. She signed a contract but was not given a copy of the contract. She could not recollect what was said in that contract as to the identity of the employer. There was a Nursery Manager. For the first week that is from 20 September 2016 to the end of the month the claimant was

5 paid one week's pay as cash in hand. She then understood that in her role as a Child Development Officer she was due the sum of £983.42 gross for the month of October 2016. She was not paid. She made contact with the Nursery Manager on three separate occasions by telephone on 8, 9 and 10 November 2016. She understood that the Manager whom she telephoned subsequently left the Nursery on 9 November 2016.

18. The claimant subsequently took advice from ACAS. She drafted a letter on their advice which was addressed to "*The Owner*" of Kelvin Nursery. The letter is dated 21 November 2016. In that letter she sought payment of wages due to her for the period 1 October to 31 October 2016 totalling £983.42 gross plus "*any holiday pay entitlement*".

19. It was pointed out to the claimant that there was no reference to holiday pay entitlement in her claim form, (the ET1).

20. Subsequently, as indicated above the claimant submitted her claim.

21. The claimant was questioned by the Tribunal as to whether she accepted that the correct respondent is Anita Bali t/a Kelvin Nursery. The claimant confirmed that she accepted this was the case. It was then explained to the claimant that the claim will now have to be served on Anita Bali t/a Kelvin Nursery who will then have 28 days in which to lodge a response, (an ET3) if she chooses to defend the claim. A copy of the claimant's letter of 21 November 2016 will be enclosed with a copy of this Judgment and the claim when it is served on Anita Bali t/a Kelvin Nursery.

22. The claimant indicated that she is also seeking to recover the issue fee incurred by her of £160. In the event that the claim is not defended by the second respondent then it will be noted that the claimant is seeking to recover the issue fee should a Rule 21 Judgment be issued. In relation to the application for holiday pay there is no reference to holiday pay in the claim form although the claimant did tick the box, "*other payments*". The

Tribunal was not, however, satisfied that this amounts to a claim for holiday pay given there is a separate box dealing with "*holiday pay*". The claimant had not provided any calculation of what any holiday pay entitlement would be and, in the circumstances, the Tribunal did not understand the claimant to be seeking to amend her claim to include a claim for holiday pay.

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24. The claimant also sought to clarify what the position would be if the claim was defended by the second respondent. It was explained to her that in that event there would have to be a Final Hearing. Any issue about the claimant's ability to pay the fee for a Final Hearing is a matter which the claimant would have to deal with by looking at the Employment Tribunal's website or contacting helpline if she is seeking assistance to pay any such fee in the event that the claim is defended and a Final Hearing has to be arranged.

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25. In the event the claim is not defended by the second respondent then given the claimant has now confirmed that her claim is directed against Anita Bali t/a Kelvin Nursery it would seem that in the absence of a response (an ET3) from Anita Bali t/a Kelvin Nursery the matter could be dealt with by way of a Default Judgment under Rule 21 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 to award the claimant the gross pay which she seeks to recover for the month of October 2016.

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Employment Judge: F Jane Garvie
Date of Judgment: 06 June 2017
Entered in register: 07 June 2017
and copied to parties

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