

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100239/17

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Held in Glasgow on 5 June 2017

Employment Judge: Ian McPherson

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Mr Jon Henderson

**Claimant
Not Present
& Not Represented**

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M & H Hospitality Group

**Respondents
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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(1) The claimant having failed to appear, or to be represented, at this Preliminary Hearing, the Tribunal, in terms of **Rule 47 of the Employment Tribunals Rules of Procedure 2013**, having considered his non-attendance, and there being no explanation for it provided in advance to the Tribunal, and the Tribunal clerk having tried unsuccessfully to contact him by telephone, decided, acting on its own initiative, not to dismiss his claim, but proceeded with the listed Preliminary Hearing in the absence of the claimant, and in the absence of the cited respondents, M & H Hospitality Group, who have not lodged any ET3 response defending the claim;

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(2) Having considered the information available to the Tribunal, in the ET1 claim form presented by the claimant, on 5 February 2017, and in his undated letter received by the Tribunal on 18 April 2017, in reply to the Tribunal's Order of 16 March 2017 for him to provide documents to the Tribunal, with copy to the respondents, and it appearing that there is a preliminary issue to be determined by the Tribunal, as to the proper identity of his employer, as at the dates complained of between 2 November and 22 December 2016, the Tribunal decided, acting on its own initiative, and in

E.T. Z4 (WR)

terms of **Rule 34 of the Employment Tribunal Rules of Procedure 2013**, to add **Chequers Limited**, a limited company (company number **SC 538463**) having its registered office at Narplan House, 63 Main Street, Rutherglen, Glasgow, G73 2JH, to become an additional party to this case, as it appears that there are issues between that company and the existing parties to this case falling within the jurisdiction of the Tribunal, namely non-payment of wages to the claimant, which it is in the interests of justice to have determined in these Tribunal proceedings ; and

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- 10 (3) Accordingly, the Tribunal, acting on its own initiative, **instructs the clerk** to the Tribunal to serve a Notice of Claim on Chequers Limited, by serving on them a copy of both the ET1 claim form, as also a copy of the claimant's undated letter received by the Tribunal on 18 April 2017, in reply to the Tribunal's Order of 16 March 2017, and **allows** Chequers Limited the usual period of 28 days after service of that Notice of Claim to lodge an ET3 response, if they seek to defend the claim brought by the claimant, and otherwise continues the case, without further Order of the Tribunal, for the Employment Judge to consider further procedure, on receipt of any ET3 from Chequers Ltd, or on the expiry of 28 days, whichever first occurs.
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REASONS

Introduction

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1. This case called before me on the morning of Monday, 6 June 2017, for a Preliminary Hearing on the identity of the claimant's employer, further to a Notice of Preliminary Hearing issued by the Tribunal, to both parties, on 27 April 2017, setting aside 2 hours, commencing at 10.00am, for this Preliminary Hearing.
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2. On 5 February 2017, the claimant presented to the Employment Tribunal an ET1 claim form, citing Mark Harris of M & H Hospitality Group, as respondent, in respect of alleged non-payment of **£1,923** wages owed to

him from his employment as Operations Manager at Chequers Bar & Grill, 283 Sauchiehall Street, Glasgow, G2 3HQ, between 2 November and 22 December 2016.

5 3. His claim was accepted by the Tribunal, and a copy served on the respondents, M & H Hospitality Group, by Notice of Claim sent to the respondents by the Tribunal on 13 February 2017, requiring the respondents to lodge an ET3 response by 13 March 2017 at latest. No ET3 response was lodged by, or on behalf of the respondents, and, accordingly, rather than an Employment Judge proceed to issue a Default Judgment, under **Rule 21 of the Employment Tribunal Rules of Procedure 2013**, Employment Judge Chris Lucas issued an Order to the claimant, on 16 March 2017, in terms of **Rule 31**, for the claimant to provide certain documentation to the respondents, with copy to the Tribunal, by 30 March 15 2017, namely written statement of employment particulars, and copy wage slips.

4. The claimant did not comply with that Documents Order by the due date but, by undated letter to the Tribunal received on 18 April 2017, he wrote to the Employment Tribunal, explaining his situation. Having seen that letter, Employment Judge Frances Eccles, on 27 April 2017, directed that the case be listed for a public Preliminary Hearing to determine, as a preliminary issue, the identity of the claimant's employer. Notice of this Preliminary Hearing was sent to the claimant, by the Tribunal, on 27 April 2017, with a copy sent to the respondents, M & H Hospitality Group, on the same date, 25 for their information only, as they had not lodged any ET3 response defending the claim raised against them.

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Preliminary Hearing before this Tribunal.

5. When the case called before this Tribunal, at 10.00am, there was no appearance for on behalf of either the claimant, or the respondents. As the respondents had not lodged any ET3 response, defending the claim, their attendance was not anticipated, but it was expected that the claimant would have been in attendance. He not being present, and there having been no contact from him to the Tribunal, in advance of the 10.00am start of this Preliminary Hearing, I instructed the Tribunal clerk to make telephone enquiry of him, as to his whereabouts and why he was not in attendance.

6. The Tribunal clerk phoned the claimant's home telephone number, and she having been advised by a lady that the claimant was not at home, but to try his mobile phone number, the clerk phoned that number, but there was no contact, so she left a message for the claimant to contact the Tribunal as soon as possible. By 10.30am, the claimant was still not in attendance, nor represented, nor had anybody contacted the Tribunal office on his behalf. As he had brought his claim, and he had replied to the Tribunal's Documents Order, I did not consider it appropriate, in the absence of any information from the claimant, as to the reasons for his non-attendance, to infer from his non-attendance that he was no longer actively pursuing his claim. He had taken no steps to write to the Tribunal to formally withdraw his claim, or to state that the respondents had paid him the sum claimed, nor to request any postponement of the listed Preliminary Hearing, on account of him being unavailable for good cause shown.

Hearing proceeds in the absence of both Parties

7. In terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, I decided, acting on my own initiative, to consider the information available to the Tribunal as per the casefile. I had regard to the ET1 claim form, and the claimant's recent letter, in reply to the Documents Order made by Judge Lucas. Albeit the claimant's ET1 had named Mark Harris of M & H Hospitality Group as respondent, and the ACAS early conciliation certificate issued on 3 February 2017 showed M&H Hospitality Group as prospective

respondent, and the claim was served by the Tribunal on M & H Hospitality Group, it was clear, from my perusal of section 8.2 of the ET1 claim form, that the claimant had referred there to his last payment of wages, on 30 November 2016, in the sum of **£1,394.18** (for hours worked from 2 to 24 November 2016) being paid by **Chequers Ltd**, of which he referred to Mark Harris being a company director.

8. Enquiry today of the Companies House website shows from the public record that **Chequers Limited**, is an active limited company (company number **SC 538463**), incorporated on 21 June 2016, and , since 5 August 2016, having its registered office at Narplan House, 63 Main Street, Rutherglen, Glasgow, G73 2JH, and that Mark Harris was a director and secretary of that company, until 20 February 2017. A Mr Stuart Young is now shown as director since 20 February 2017.

Chequers Ltd added as additional Respondent

9. In these circumstances, it appearing that there is a preliminary issue to be determined by the Tribunal, as to the proper identity of the claimant's employer, as at the dates complained of between 2 November and 22 December 2016, I have decided, acting on my own initiative, and in terms of **Rule 34 of the Employment Tribunal Rules of Procedure 2013**, to add **Chequers Limited**, to become an additional party to this case, as it appears that there are issues between that company and the existing parties to this case falling within the jurisdiction of the Tribunal, namely non-payment of wages to the claimant, which it is in the interests of justice to have determined in these Tribunal proceedings;

10. Accordingly, I have instructed the Tribunal clerk to serve a fresh Notice of Claim on Chequers Limited, and allow them the usual period of 28 days after service of that Notice of Claim to lodge an ET3 response, if they seek to defend the claim brought by the claimant. Otherwise, i have decided to continue the case, without further Order of the Tribunal, for me to consider

further procedure, on receipt of any ET3 from Chequers Ltd, or on the expiry of 28 days, whichever first occurs. The casefile will be referred to me again at that time, for further instructions.

5 **Postscript**

11. After drafting this Judgment, I was updated by the Tribunal clerk. I am advised that the claimant telephoned the Tribunal office, at about 11.30am, and he advised the clerk that he was aware of the listed Hearing and he was at work, having been called into work early. While, I had already
10 decided to proceed in his absence, and not dismiss his claim, that was because I felt , as I still do, that service on Chequers Limited was required by the interests of justice.

12. I would, however, observe that the claimant's laissez faire approach by going to work, and not attending the Tribunal, or advising the Tribunal that he had to go to work, rather than attend this Tribunal, is not, in my view, consistent with a claimant promptly and diligently attending to prosecution of their claim presented to the Employment Tribunal. But for his previous
15 correspondence to the Tribunal, I would likely have dismissed his claim, there and then, as his non-attendance, and failure to contact the Tribunal, before 10.00am start, is an indicator that a claimant is not actively pursuing their ET1 claim against the respondents.

13. While the Employment Tribunal process is informal, it is nonetheless a judicial process. Parties should, in pursuit of proceedings before the Tribunal, take proactive steps to advise the Tribunal and other party of their position, at the earliest possible opportunity, and to timeously reply to correspondence from the Tribunal, and comply with case
25 management orders made by the Tribunal, and to do so timeously within whatever period for compliance is set by the Tribunal, or advise the Tribunal of the need for an extension of time, and to explain why an extension of time is needed.

14. Going forward, I would take this opportunity to remind the claimant that any further failure to comply with orders of the Tribunal, or failure to attend a duly convened Hearing before the Tribunal, is likely to result in his case being considered for dismissal, on account of failure to comply with an Order of the Tribunal, and / or failure to actively pursue this claim

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Employment Judge: Mr G Ian McPherson
Date of Judgment: 06 June 2017
Entered in register: 08 June 2017
and copied to parties

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