



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4112537/2018

Preliminary Hearing Held at Dundee on 5 February 2019

Employment Judge: Mr A Kemp (sitting alone)

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Mr J Brannan

**Claimant
In person**

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The Phoenix Bar

**Respondent
(No appearance at
hearing)**

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DECISION

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The Claimant was employed by There Must Be A Pony Limited and service of the Claim Form shall be made on that party.

Introduction

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1. The Claim made was for unfair dismissal and unpaid holiday pay against a Respondent stated to be "The Phoenix Bar". The Respondent did submit a Response Form, denying that there had been a dismissal but stating that the wrong entity had been convened, after which there was a Preliminary Hearing held. At that, the Claimant was noted to have indicated that he no longer claimed unfair dismissal, but he did wish to claim holiday pay according to a schedule of loss, and the identity of the employer was disputed. That led to

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the present Hearing to determine solely the issue of the identity of the employer.

2. The Respondent wrote to the Tribunal on 10 December 2017 with a copy of a letter to the Claimant, tendering a cheque for £135 for the unpaid holiday pay, stating that the employer was There Must be a Pony Limited, and that the Respondent would not appear at the Hearing.
3. The Claimant appeared, and gave evidence. He produced documents. No evidence was led for the Respondents. The Claimant gave evidence clearly and candidly, and I accepted what he said. He submitted after the hearing further written evidence by email dated 12 February 2019, which included online records of Her Majesty's Revenue and Customs. He had not accepted the payment tendered, and had not encashed the cheque.

The issues

4. The issue that arose in the case was who or what corporate entity was the employer of the Claimant

The Facts

5. The Tribunal found the following facts established:
6. The Claimant is Jamie Brennan.
7. He was employed at the Phoenix Bar in Dundee, working on a part-time basis.
8. He received what purported to be a statement of terms and conditions of employment, but which merely identified his employer as "Phoenix Bar".
9. His tax records refer to taxable income from the employer "There Must Be A Pony Limited".

10. Company House records indicate that that is company number SC289467, with a registered office at 14 City Quay, Dundee DD1 3JA.
11. Solicitors acting for that company wrote to the Claimant, copied to the Tribunal, stating that that company was the employer of the Claimant, and was the employer of the staff at the Phoenix Bar.

Discussion

12. In light of the evidence from HMRC in particular, which corroborates the assertions made by the solicitors for the company, the employer was There Must Be A Pony Limited, whose details are set out above.
13. The Claim shall therefore be intimated to that party, and a Final Hearing can be fixed to determine the Claim for unpaid holiday pay that remains.
14. During the hearing before me, the Claimant indicated that he wished to proceed with an unfair dismissal claim. In the earlier Preliminary Hearing he had indicated however that that was withdrawn. If he wishes to seek to change his position on that withdrawal, he shall require to write to the Tribunal with an application to do so, full reasons for that application and send a copy to the solicitors for There Must Be A Pony Limited. That application, if formally made, will then be determined separately.

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30 **Employment Judge:** **Alexander Kemp**
Date of Judgment: **18 February 2019**
Entered in register: **19 February 2019**
and copied to parties