

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104584/2017

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Held in Glasgow on 8 January 2017

Employment Judge: W A Meiklejohn

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Mr Scott Andrew Campbell

**Claimant
In Person**

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1. Flynns James Limited t/a Flec Payroll

**First Respondent
No Appearance
& Not Represented**

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2. HG Airdrie Limited

**Second Respondent
No Appearance
& Not Represented**

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3. Flec Payroll Limited

**Third Respondent
No Appearance
& Not Represented**

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4. Mark Hood Houston

**Fourth Respondent
No Appearance
& Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the Claimant's claims in respect
45 of breach of contract, unlawful deductions of wages and holiday pay succeed, and
the Respondents are ordered to pay to the Claimant the following sums:-

- (1) The sum of **THREE HUNDRED AND FORTY EIGHT POUNDS AND EIGHTY TWO PENCE (£348.82)** in respect of pay in lieu of notice;
- 5 (2) The sum of **EIGHTY FOUR POUNDS AND SIXTY PENCE (£84.60)** less the appropriate deductions for Income Tax and National Insurance contributions, in respect of unlawful deduction of wages;
- (3) The further sum of **SIXTY POUNDS (£60.00)** in respect of unlawful deduction of wages;
- 10 (4) The sum of **ONE THOUSAND AND FIFTEEN POUNDS AND TWENTY PENCE (£1,015.20)** less the appropriate deductions for Income Tax and National Insurance contributions in respect of holiday pay, and
- 15 (5) The sum of **ONE THOUSAND, SIX HUNDRED AND NINETY TWO POUNDS (£1,692.00)** in respect of failure to give a statement of employment particulars.

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REASONS

1. This case was listed for a Final Hearing on 8 January 2018. The date of the
25 Final Hearing had been decided at a Preliminary Hearing (before Employment Judge MacLean) held on 11 December 2017 (of which the First Respondent was sent notice but at which the First Respondent was not present nor represented). A Note and Orders were sent out following said Preliminary Hearing to the Claimant and the First Respondent on 13
30 December 2017. Notice of the Final Hearing was sent to the Claimant and the First Respondent on 27 December 2017.
2. The Orders made by the Tribunal following said Preliminary Hearing on 11 December 2017 and sent out on 13 December 2017 required the First

Respondent to provide the Claimant (with copies to the Tribunal) before 29 December 2017 with Additional Information being written specification of why the response to the claim had been submitted on behalf of the First Respondent, and that such specification should include:-

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- (a) The identity of the Claimant`s employer and why that is said to be so.
- (b) An explanation as to why the Claimant`s payslips were issued by the Second Respondent and the Third Respondent (as they now are following my Order to add them as additional Respondents).
- (c) What is the relationship, if any, between the Second Respondent, the Third Respondent and the First Respondent.

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The Tribunal`s said Order was not complied with.

3. The Fourth Respondent sent an email to the Tribunal on 3 January 2018 effectively seeking a postponement of the Final Hearing, presumably on behalf of the First Respondent. Employment Judge Robison refused that application for the reasons set out in the Tribunal`s letter to the First Respondent dated 4 January 2018.

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4. At the start of the Final Hearing on 8 January 2018 the First Respondent was not in attendance or represented. The Clerk attempted to contact the First Respondent on the telephone number provided on the response form and, obtaining no reply, left a message. While the Final Hearing was in progress there was a call in response to that message in the course of which the Clerk was advised that the Fourth Respondent was incapacitated and had been so for a period of some six months.

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5. For the reasons I explain below I decided on my own initiative, in terms of Rule 34 contained in Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (the "*Rules*") to add the Second

Respondent, the Third Respondent and the Fourth Respondent as additional Respondents prior to the conclusion of the Final Hearing.

Evidence and Findings in Fact

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6. I heard evidence from the Claimant and, on his behalf, from his partner Ms M McLeod. The Claimant lodged as productions copies of information obtained from Companies House in respect of the First Respondent, the Second Respondent and the Third Respondent. The Claimant also lodged as a production copies of information obtained from Companies House in respect of The Star (Strathaven) Limited (company number SC 535297) which included reference to the Fourth Respondent as a “mutual person” in respect of that company, the Second Respondent and eight other companies.

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7. On 6 February 2017 the Claimant commenced employment as a Chef at The Strathaven which is a public house and restaurant located at 6 Waterside Street, Strathaven. He was introduced to this position by an acquaintance Mr Colin Fraser, who was at that time Head Chef. Mr Fraser left shortly after this and the Claimant succeeded him as Head Chef. The Claimant was paid £423.00 per week gross (weekly in cash each Sunday) and received a weekly payslip.

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8. The Claimant was interviewed for the position of Chef by Ms Jane Clark who he understood to be the Fourth Respondent’s “right hand person”. He met the Fourth Respondent only some four to six weeks after his employment had commenced. When his employment started the Claimant was not told about his holiday entitlement nor about the holiday year by reference to which that entitlement was calculated. The Claimant was not issued with a statement of terms and conditions of employment.

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9. The payslips issued to the Claimant during his employment, which he had earlier produced to the Tribunal and copies of which were on the case file, bore the name of the Second Respondent. The only exception to this was the Claimant's final payslip which bore the name of the Third Respondent. Prior to receiving these payslips the Claimant had not heard of the Second Respondent or the Third Respondent. Based on his payslips the Claimant assumed that the Second Respondent had been his employer and framed his claim form on this basis. The response form was, as stated above, submitted on behalf of the First Respondent of which the Claimant had again not heard prior to receiving this.
10. The Claimant requested holidays during the course of his employment but his requests were not granted. He was absent from work on Friday 1 and Saturday 2 June 2017 but these days were in place of his normal Wednesday/Thursday off, and he received his normal pay for that week. I was satisfied that the Claimant did not take any holidays during his period of employment.
11. On Friday 14 July 2017 the Claimant reported for work as normal around 11.00am. He set up the kitchen in preparation for lunch. Around 11.40am Ms Melanie Ross, the Bar Manager, called him through and asked him to sit down. She told him that Mr Houston (the Fourth Respondent) was having to pay him off due to a complaint posted on Facebook. The Claimant was not given details of the complaint.
12. The Claimant asked Ms Ross about payment of monies due to him and she advised that he would receive these on Sunday 16 July 2017. She asked him to leave the premises which the Claimant duly did.
13. It did not suit the Claimant or Ms McLeod to go to the premises on Sunday 16 July 2017 but Ms McLeod did so on Monday 17 July 2017. She received from Ms Clark an envelope containing a payslip for the sum of £167.70,

bearing the name of the Third Respondent, but enclosing only £107.70. Ms Clark told Ms McLeod that she had removed £60.00 of the money due to the Claimant as he owed her that amount. The Claimant had not authorised this deduction.

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14. The Claimant wrote to the Fourth Respondent on 14 July 2017 regarding payment of additional monies to which he believed he was entitled. There was on the case file a letter to the Claimant dated 2 August 2017 and signed by the Fourth Respondent on behalf of the First Respondent (referred to therein Flynn James Ltd) disputing the Claimant`s entitlement to further monies. The Claimant`s address was incorrectly stated in this letter and the Claimant did not receive it.

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15. The Claimant did not receive any notice of his dismissal nor pay in lieu of that notice. The Claimant was not paid for working on 14 July 2017 having reported to do so.

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16. As the Claimant has not received a statement of terms and conditions of employment his holiday entitlement (and the calculation of the applicable holiday year) required to be determined by reference to the Working Time Regulations 1998 as more fully described below.

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17. From the payslips referred to at paragraph 9 above it was apparent that the Claimant`s net weekly pay was £348.82.

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Applicable Law

18. In relation to notice entitlement the relevant statutory provision is Section 86 of the Employment Rights Act 1996 (“ERA”) in terms of which, as an employee with more than one month`s service but less than two years` service the Claimant had at the date of his dismissal a notice entitlement of one week.

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19. In relation to unlawful deduction of wages the relevant statutory provision is Section 13 ERA in terms of which unless consent has previously been signified in writing an employee or worker must not suffer a deduction from wages. This section also covers non-payment of wages properly due to be paid to the employee or worker.
20. In relation to holiday pay the relevant statutory provisions are contained in the Working Time Regulations 1998. Under Regulation 13(3)(b)(ii) the leave year is based on the employee's start date (and the anniversary thereof) in the absence of provision in a relevant agreement having contrary effect. The minimum annual entitlement is 5.6 weeks.
21. Also relevant is Section 38 of the Employment Act 2002. This applies where there is a finding in favour of the employee in one of the relevant jurisdictions (which include unlawful deduction of wages) and the employer has not complied with the obligation to issue a written statement of employment particulars. In such circumstances the Tribunal must award a minimum of two weeks' pay and may, if it considers it just and equitable to do so, award the higher amount of four weeks' pay.

Discussion & Disposal

22. I found the Claimant and Ms McLeod to be credible witnesses. Their evidence was given to the best of their recollection and was not exaggerated in any way.
23. I had no evidence before me to indicate that there were grounds for the termination of the Claimant's employment without notice. I noted that the instruction to terminate bore to come from the Fourth Respondent. The Claimant had been entitled to receive the statutory minimum of one week's notice of termination and, in the absence of such notice, he was entitled to be compensated in terms of pay in lieu of notice to the extent of his loss which equated to one week's net pay amounting to £348.82

24. The Claimant had reported for work as usual on Friday 14 July 2017 and was entitled to be paid for that day. He received £432.00 gross for working a five day week which equated to the sum of £84.60 for one day, less the usual deductions for Income Tax and National Insurance.
25. The Claimant had not signified in writing his agreement to the sum of £60.00 being deducted from his final pay. This therefore represented an unlawful deduction from his wages in respect of which he was entitled to reimbursement.
26. The Claimant had accrued holidays (based on 5.6 weeks or 28 days for a full holiday year) for the period 6 February 2017 until 14 July 2017. I calculated this to be 12 days (2.33 days per month for 5.25 months, rounded to the nearest whole number) at a daily rate of £84.60. This produced a total of £1,015.20 again subject to the usual deductions for Income Tax and National Insurance.
27. The Claimant had not been issued with a statement of terms and conditions of employment. This served only to compound the difficulty, to which I will turn below, in identifying his employer (being one of the points which a compliant statement would cover). In the absence of any evidence of compliance with the statutory obligation to issue a statement and having regard to the confusion created by the different company names appearing on the Claimant's payslips and in the response form I believed it was just and equitable in this case to award the higher amount provided for in Section 38(4) of the Employment Act 2002. Accordingly I decided that the Claimant should be awarded four weeks' pay which totalled £1,692.00.
28. The principal difficulty faced by the Claimant in pursuing this case was knowing against whom to pursue it. He had not been told the identity of his employer when his employment started although he was aware that the Fourth Respondent was involved. He had not received a written statement

identifying his employer. He became aware of the Second Respondent only when their name appeared on his payslip (and similarly of the Third Respondent when their name appeared on his final payslip). He pursued his claim against the Second Respondent only to be met with a response from the First Respondent. The information he was able to obtain from Companies House indicated that the Fourth Respondent had an involvement with a number of companies including the Second Respondent but not the First Respondent, but the Fourth Respondent had been named as the contact for the First Respondent and had written to the Claimant (albeit the letter was not received) on behalf of the First Respondent.

29. I reminded myself of the terms of Rule 34 of the Rules and, prior to the conclusion of the Final Hearing, I decided that an Order should be issued adding the Second, Third and Fourth Respondents. I believed that it was in accordance with the overriding objective to deal with cases justly that I should do so.

30. I also reminded myself of the decision in **Cocking -v- Sandhurst (Stationers) Ltd [1974] ICR 650** and in particular the judgment of Sir John Donaldson at pages 656/657. I took account of the guidance in **Selkent Bus Co Ltd -v- Moore [1996] ICR 836**. The Claimant was entitled to a remedy against whoever was his employer on 14 July 2017. It seemed to me probable that this was one of the four Respondents. The Fourth Respondent was best placed to provide that information but, despite his acting as the contact for the First Respondent there had been no compliance with Employment Judge MacLean`s Order (see paragraph 2 above). If the Second, Third or Fourth Respondents believe that they should not have been added as Respondents in these proceedings they can of course seek a reconsideration under the Rules.

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5 **Employment Judge: W A Meiklejohn**
Date of Judgment: 11 January 2018
Entered in register: 15 January 2018
and copied to parties

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