



# THE EMPLOYMENT TRIBUNALS

## Claimants

Ms Ashleigh Duff

## Respondent

Pinpoint Social Ltd

### **JUDGMENT (Liability and Remedy)** **Empolymment Tribunals Rules of Procedure 2013 –Rule 21**

1. The respondent's name is amended to that shown above without the need for re-service.
2. The claim of unlawful deduction from wages is well founded. I order the respondent to repay to the claimant the sum of £543.71 .
3. The Hearing listed for 23<sup>rd</sup> July 2018 is cancelled

### **REASONS**

1. The claim is for wages owed. The relevant law is in Part 2 of the Employment Rights Act 1996 ( the Act ).
2. The claim was presented on 8 May 2018 against "Pinpoint Social " . The address given for service was Hope Street Xchange , Hind Street, Sunderland SR1 3QD. The claim form was sent to that address by post on 25<sup>th</sup> May 2018 and has not been returned by Royal Mail . No response was presented by the due date of 22<sup>nd</sup> June.
3. The file was referred to Employment Judge Johnson who declined to issue a judgment under rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) because a company search revealed the existence of a company called "Pinpoint Social Limited" and the address of its registered office as " The Greenhouse, Greencroft Industrial Estate , Stanley , County Durham, DH9 7XN " . He caused a letter to be sent to the claimant on 26<sup>th</sup> June asking if that limited company was her employer and told her the registered office address. No injustice is done by amending to add the word "Limited" to the title of the respondent.
4. The claimant replied by email on 26 June saying the two people associated with the company are Mr Hillary James Love and Mr Graham Robert Robson who work from the Hope Street Xchange building, which comprises suites of offices rented by various businesses. She also included a link to Companies House showing the correspondence address of both of these gentlemen as the address in Stanley quoted above. Her claim form set out in some detail her efforts to secure payment of the monies she was owed using direct personal telephone numbers and email accounts. She had little or no response. As with all claims of this nature it had to be preceded by Early Conciliation. The ACAS certificate shows the claimant first

contacted them on 19 April and they issued a certificate on 8 May giving the address for the respondent as Hope Street Xchange..

5. A limited liability company is an association of human beings registered at Companies House. It is a legal **person** in its own right. The people who manage the company are called Directors. The people who “own” the company are called shareholders. Neither Directors nor shareholders are personally liable for the debts of a company. In her email of 26 June the claimant said the directors sometimes used a trading name “Tweetlocator”. She enclosed a piece of letterhead showing that trade name to be not of the directors but of Pinpoint Social Limited and the address as Hope Street Xchange. A claim may be validly served on a limited company either at its registered office or its place of business.

6. In Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington the question on the appeal was whether an Employment Tribunal was entitled to conclude Mr Du Toit had been properly served with the proceedings. Ms Stubbington presented her complaint, naming Berkshire Orthodontics as respondent. No response was entered and on 1 October 1999, the complaint came before a Judge . He ordered **an** amendment to name Mr Zietsman and Mr Du Toit, trading as Berkshire Orthodontics, as respondents and proceeded to hear the claim in their absence. He upheld it.

6. Mr Du Toit lodged application for review saying he had received notification of the decision on 22 October but did not know about the Tribunal case until that date. That review application was heard and dismissed. The Tribunal identified the relevant provision in the Employment Tribunal Rules of Procedure 1993 as Rule 11(1)(b) by which it had power to review its decision on the ground that “(b) a party did not receive notice of the proceedings.” They heard evidence from Mr DuToit, none of which they rejected. He had ceased to practice from the service address, did not visit the premises, nor make arrangements for mail to be forwarded. The Tribunal regarded that as irresponsible conduct, to which his ignorance of the proceedings was wholly attributable so declined to review the original decision.

7. In that case the tribunal was dealing with a partnership rather than a company but comments on appeal made by His Honour Judge Peter Clark are just as valid. He accepted Mr DuToit had no actual notice of the proceedings. Whether he was deemed to have notice under the provisions of section 7 of the Interpretation Act 1978, was the question. The 1993 Rules were to be read in conjunction with Section 7 of the Interpretation Act 1978, see Migwain Ltd v TGWU [1979] ICR 597; followed in T & D Transport v Limburn [1987] ICR 696, Rule 20(3) provided

*"All notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post ... to*

*(c) in the case of a notice or document directed to a party –*

*(i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, ... or*

*(ii) if no such address has been specified, or if a notice sent to such an address has been returned, to **any other known address or place of business** in the United Kingdom ...*

8. Section 7 of the Interpretation Act provides

*"Where an Act authorises or requires any documents to be sent by post (whether the expression 'serve' or the expression 'give' 'send' or any other expression is used)*

*then, unless the contrary intention appears, the service is **deemed to be affected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.***"

9. The Rules now say

*86(1) Documents may be delivered to a party (whether by the Tribunal or by another party)—*

*(a) by post;*

*(b) by direct delivery to that party's address (including delivery by a courier or messenger service);*

*(c) by electronic communication; or*

*(d) by being handed personally to that party...*

The EAT said that "*in the context of employment protection legislation. It will often be the case that an employer goes out of business and ceases to trade from the premises at which the former employee worked. In such circumstances where is the employee to direct his claim? It must be to the last known place of business*".

10. I am convinced this claim has been validly served on the respondent. Limited liability companies which trade from premises other than the address of their registered office as revealed by a Companies House search are a common occurrence in the Tribunal. They must make arrangements for post delivered to the trading address to reach a person who will deal with it. A purposive interpretation of the Rules is necessary in the interests of justice.

11. An Employment Judge is required by rule 21 to decide on the available material whether a determination can be made and if so, obliged to issue a judgment which may determine liability only liability and remedy. I have in the claim form sufficient information to enable me to find the claims proved on a balance of probability and enough to determine the sums to be awarded..

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**T M Garnon EMPLOYMENT JUDGE**  
**SIGNED BY EMPLOYMENT JUDGE ON 3<sup>rd</sup> July 2018**