



THE EMPLOYMENT TRIBUNALS

Claimant

Ms Nicole Butler

Respondent

Win Win Management UK Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON 23rd July 2018

EMPLOYMENT JUDGE GARNON (Sitting Alone)

Appearances

For Claimant: in person

For Respondent: Mr L Baron Legal Executive

JUDGMENT ON RECONSIDERATION AND REMEDY

1. Upon reconsideration, I confirm my judgment of 3rd July 2018.
2. On the claim of breach of contract, I award damages of £ 346.15 to be paid by the respondent to the claimant.
3. On the claim of unlawful deduction of wages, I order the respondent to repay £ 346.15 to the claimant.
4. On the claim of failure to pay compensation for untaken annual leave, I order the respondent to pay to the claimant compensation of £ £1152.68.
5. Under s 38 of the Employment Act 2002 I increase the awards by £1384.60.

The Total payable under this judgment is £ 3229.58.

REASONS (bold print is my emphasis)

1. The claim was presented on 27 March 2018 against "Winwin Management" . The address given for service was Oak Bank Business Centre, Mickley Hall Lane, **Nantwich**, Cheshire CW5 8WH. The claim form was sent to that address by post on 3 April 2018. No response was presented by the due date of 1st May. The file was referred to me and on 8 May. I declined to issue a judgment under rule 21 because a company search revealed the service address to be the registered office of Win Win Management UK Ltd, but its postcode was CW5 8AH. I caused a letter to be sent to the claimant asking her to confirm that limited company was her employer and if so did she agree to its name being amended and consent to the claim being sent again to the correct postcode. She gave her consent to both steps on 25 May, so

Employment Judge Buchanan ordered the claim to be re-sent. No injustice was done by amending to add the words "(UK) Limited" to the title of the respondent.

2. A claim may be validly served on a limited company either at its registered office or its place of business. This claim was posted to the registered office and returned, by Royal Mail, marked "addressee gone away". I caused a letter to be sent to the claimant asking if she had any other means of contacting the respondent. She replied the former directors had opened another business.

3. 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 it are called Directors. The people who "own" shares in the company are called shareholders. Neither Directors nor shareholders are personally responsible for the debts of a company. I ordered the claim to be sent again which it was on 26 June . It was again returned marked "addressee gone away".

4. On 3rd July 2018, I gave judgment on liability only under Rule 21 . I cited Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington Section 7 of the Interpretation Act and Rule 86. I found the claim was deemed to have been validly served on the respondent. I added " *Limited liability companies which simply cease to trade and do not change the address of their registered office as revealed by a Companies House search are a common occurrence in the Tribunal.* " The claim form said the claimant had been employed from **28 April 2017** to **30 January 2018**. Today she said the start date was a mistake. After two days training she started on 28th March 2017

5. In these reasons I shall refer to Win Win Management UK Ltd as "WW"; The Lead Generation Hub Ltd as " LGH" ; Call Centre People Ltd as "CCP" and Your Company Formations Limited as "YCF" .

6. The details of claim on the claim form read :

*"I was employed by win-win management **also goes by name** lead generation hub. My salary was supposed to be £18000. I come out with just under 900 a month which never made sense. They owe me a weeks notice pay,a weeks pay and 2 weeks holiday pay. Zac Robinson and Andrew Quinlan owned the company and shut it down in Sunderland but left Bishop Auckland office open. I was supposed to get paid 28/02/19 but they cancelled all phone calls ,still not replying to messages and are still working there, refused all contact with ACAS ."*

7. WW was incorporated on 5 August 2014. A company search performed on 25 June 2018 revealed it was an active company , its registered office was Oak Bank Business Centre, Mickley Hall Lane, Nantwich, Cheshire CW5 8WH and its accounts for 31 May 2018 were overdue. Further searches show WW had one officer Zac Andrew Robinson who gave as his correspondence address the Oak Bank Business Centre above, his date of birth as in April 1991 and his date of appointment as 5 August 2014.

8. The claimant gave her place of work as Azure Court, Signatures House, Sunderland SR3 3BE. This is a small business centre on an enterprise park on the outskirts of Sunderland. When she answered a request for further information about a contact address on 18 June she said the directors had "*opened another company I will attach the new address they have registered. Same director Zac Andrew Robinson.*" What she attached showed the company CCP . CCP was incorporated on **25 January 2018**. A search showed that too was an active company with no

accounts yet filed because none were due until October 2019 , its registered office was 3 Chantry Court, Forge St, Crewe CW1 2DL. The directors are Zac Andrew Robinson and Robert Kilpatrick Agnew . Although CCP was formed a week after the claimant's employment ended, I still have no factual basis upon which to conclude her employment transferred to it.

9. A limited company, like a natural person, can trade under a name other than its own so “ lead generation hub” may have been a trade name of WW. On 12 July I performed a company search which revealed LGH was an active company incorporated on **16 May 2017**. Its registered office address was shown as a Companies House default address. A search last week for the officers of the company showed one Pete Hendry appointed on **16 May 2017** who resigned on **18 December 2017**. His correspondence address was Kemp House, 160 City Rd, London EC1V 2NX. That is the registered office and trading address of YCF.

10. Nothing in these reasons is any criticism of YCF. It is a business offering company formations and ancillary services. It is likely LGH was set up by YCF. The claimant said, and Mr Baron did not challenge, Mr Hendry visited Sunderland, in her words, “ **from Nantwich**”. The registered office of LGH became the Companies House default address on 11 May 2018. Prior to that I believe it was the address of YCF. Its first accounts were due to be made up to 31 May 2018 and filed by 16 February 2019 but its first confirmation statement to 15 May 2018, due on 29 May 2018, is shown by Companies House as overdue.

11. YCF's website says

Companies House legally require all directors of UK companies and partners of LLP's to register an address for the director on the public record. Any legal documents from Companies House or HMRC will be sent to them at this address. Many people choose their residential address without being fully aware this is in the public domain and accessible by anyone.

Many of our clients choose to use our professional directors service address which allows them to use our prestigious London address as their directors service address. This will prevent their home address from showing on the public All statutory post from Companies House and HMRC is forwarded free of charge to UK and international addresses.

12. All this points to LGH as a company in itself never trading. Mr Baron said today it was used by WW as an intermediary to employ staff who were supplied as agency workers to WW and a standard form contract existed which showed it as the employer of such workers. LGH exercised no control over their activities, WW did. It did not pay them , WW did direct . The claimant was never given even the standard form. She asked Mr Robinson for one many times and was told she would be given one, not that LGH was her employer so she should ask them.

13. The judgment I issued on 3 July was sent to the parties on that day . In the case of the respondent it was posted to the Oak Bank Business Centre address. On 10 July an email was received from “Levi Baron Win-Win Management UK Ltd” a legal executive employed by WW who submitted a response form. The grounds of defence are that the claimant's contract was with LGH not WW. It says Mr Hendry has no connection with WW and no directors of WW have control over LGH. It also

says the claimant has **never been** a “contracted employee” of WW. Mr Baron sets out the doctrine of privity of contract in legally correct form but irrelevant to the issue I have to decide which is **who in reality employed the claimant at the date of termination**. Mr Baron’s explanation for the judgment having reached WW and the service papers not doing so three times was the directors of WW had no access to Oak Bank Business Centre and only found out about the judgment when WW applied for credit and the judgment showed on a credit reference search. Dubious though I am it showed so quickly, I am reconsidering the judgment as requested.

14. The response form submitted by Mr Baron denies all connections between WW’s or its directors and LGH. Mr Baron has signed a statement of truth dated 17 July 2018 verifying the above information. The address he gives for WW (and it is **significant** he signs it as “Win Win Management” not with the full corporate title) is 3 Chantry Court. That is the registered office of CCP.

15 When the claimant was copied into this information she sent in an attachment of her online banking showing WW paying her wages **in December 2017**. She also sent in a copy email from her as Business Consultant with the logo at the bottom “Win Win”. In response Mr Baron by email of 17 July says the respondent has never denied paying her or alleged she never represented “**the WW brand**”. He said the claimant was employed **throughout** by LGH and supplied as an agency worker to WW. Quite simply the claimant cannot have been employed by LGH when she started because it had not at that date been incorporated. Mr Hendry was a director only until December 2017, over a month before the claimant’s employment ended. Thereafter LGH was director-less company not apparently carrying on business. He adds WW is shortly to enter liquidation.

16. Launahurst Limited v Larner is a 2009 decision of the EAT where HH Judge Reid QC said an Employment Tribunal had been correct to find an arrangement was a “sham”. The “sham point” does not mean the contract must be designed to deceive. That argument is sometimes anchored in comments by Rimer L.J. in Consistent Group-v-Kalwak in 2008. However, in the 2009 in a Court of Appeal case of Protectacoat-v-Szilagi and again in Autoclenz Ltd v Belcher 2011 ICR 1157, it was said the question in every case is whether what is written on paper does or does not accurately reflect the reality of a situation. Autoclenz also says tribunals should be more ready to ‘look behind’ a written agreement in an employment context because parties will not generally have equal bargaining power. The Supreme Court approved Sedley LJ’s words ‘*the factual matrix in which the contract is cast is not ordinarily the same as that of an arm’s-length commercial contract*’. In this case having heard the claimant and Mr Baron I am satisfied this is truly a sham. In fairness to Mr Baron, what he described today may have been a bona fide arrangement whereby the employer of the claimant and others working at Azure Court was always WW and LGH were its agent to recruit staff and thereafter manage HR aspects of their relationship with WW. If I accept, which I am prepared to, the directors of WW have no control over LGH, my conclusion WW was in reality the employer remains. Today was an attempt to divert liability on a judgment properly entered against WW to LGH against which payment would be impossible to enforce.

17. A contract of employment may be brought to an end only by reasonable notice unless the claimant is guilty of “gross misconduct”. Unless the respondent shows on balance of probability gross misconduct has occurred, the dismissal is wrongful and damages are pay for the notice period less sums earned in mitigation. The statutory

minimum notice in this case would be 1 week. Because the claimant never received pay slips, neither she nor I can sure of her net pay. I therefore base the award on her gross pay of £ 346.15.

18. The law relating to unlawful deduction of wages is in Part 2 of the Employment Rights Act 1996. The claimant was not paid at all for the last week of work.

19. The Working Time Regulations 1998 say in Regulation 14 that where a worker's employment is terminated during the course of a leave year, and on the date on which the termination takes effect the proportion he has taken of the leave to which he is entitled in the leave year differs from the proportion of the leave year which has expired, his employer shall make him a payment in lieu of untaken leave calculated by a formula in Reg 14 . Such sums, like unpaid wages, are awarded gross of tax. The claimant in 10 months of employment was given paid holiday only on bank holidays of which there were eight. The balance of the leave to which she would have been entitled for the full year would be four weeks. For 10/12 of the year she worked, her compensation is 3.33 weeks pay which comes to £1152.68.

20. Section 38 Employment Act 2002 applies to these proceedings and says if an employment tribunal makes an award and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996,

the tribunal **must** other than in exceptional circumstances increase the award by the minimum amount of two weeks' pay and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount of four weeks' pay instead. The claimant was never given a statement of terms and conditions of employment as required by the 1996 Act either by WW or LGH . The failure to do so has caused her and the Tribunal needless work and expense in tracing the identity of the correct corporate employer. The higher amount is merited .£ 346.15 x 4 = £1384.60.

TM Garnon Employment Judge
Date signed 23rd July 2018.