



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4104704/2018  
Held in Edinburgh on 2 April 2019  
Employment Judge: Ms Amanda Jones (sitting alone)**

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**Miss Kerryann Kuszeluk**

**Claimant  
Represented by  
Mr Anderson, solicitor  
Rollo Law LLP**

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**Heather Young and others**

**Respondent  
Represented by  
Brian Young**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Tribunal determined that the claimant was employed at all material times by Hazel Young trading as Beyond Beauty.

It is directed that the case should now be listed for a full hearing on the merits of the claims and that the correct respondent should be amended to Hazel Young trading as Beyond Beauty.

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**REASONS**

**INTRODUCTION**

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1. A claim was presented by the claimant on 15 May 2018 claiming unfair dismissal, breach of contract and failure to pay a redundancy payment. The respondent was noted as 'Hazel Young' and the place of work 'Beyond

**E.T. Z4 (WR)**

Beauty'. The details of claim referred to the claimant's 'former employment at Beyond Beauty where her employer was Hazel Young'. In the section for Additional Information, it stated "Hazel Young has sold the salon Beyond Beauty, which is now in new ownership. She has separate business interests and also trades as Changes (Fife) Ltd, with these details appearing on

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2. By letter dated 8 June, the claimant's representative sought to add additional respondents to the claim. In particular, she sought to add "Beyond Beauty' and 'Changes (Fife) Limited". The application was sought 'in the event that Hazel Young is not personally liable'.

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3. The claim was served on all three respondents. A response form was received by the Tribunal office on 25 June 2018. The response form recorded the respondent as 'Beyond Beauty' and "Hazel Young' as the contact. No reference was made to Changes (Fife) Ltd in the response.

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4. A standard letter was issued to the parties stating 'Where the name given by the respondent on the Response differs from that given on the claim, we shall assume unless we hear from you to the contrary, in writing within 7 days of the date of this letter, that the name given by the respondent is correct.'

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5. Following a review of the file, a letter was issued to the respondent's representative requesting clarification as to whether the response form was to be accepted on behalf of all three respondents. The letter listed the respondents as 'First respondent: Hazel Young; Second respondent: Beyond Beauty; Third respondent: Changes (Fife Limited) (Sc453238).

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6. An email was received by a Mr Thornber from Thornber HR Law on behalf of the respondents on 20 August, which stated that the response was to be accepted on behalf of all three respondents. It went on to state "However, it is the respondent's position that Beyond Beauty was the trading name of the company and that the relevant employer for the claimant is Changes (Fife Limited) t/a Beyond Beauty. Hazel Young was the owner of the business but

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was not the employer. No application was sought for a preliminary hearing to determine the identity of the employer.

5 7. The claimant's representative wrote to the Tribunal by letter dated 21 August providing additional information in relation to her claim.

8. The case was then listed for a full hearing in December 2018, but was postponed on the ground of the first respondent's ill health.

10 9. The hearing was then set down for 3 days commencing 2 April 2019. In advance of that hearing an application for postponement was made but subsequently withdrawn.

15 10. At the commencement of the hearing, the Tribunal raised the issue of the identity of the employer.

20 11. At that point the Tribunal was advised by the respondents' representative that Change (Fife) Limited was no longer trading and had been dissolved. The respondent maintained that Changes (Fife) Limited was the employer of the claimant.

12. The status of the Third respondent had not been communicated to the Tribunal or the claimant previously.

25 13. Parties were invited to make submissions on how to proceed. Both parties submitted that the identity of the employer should be determined before proceeding to hear evidence on the merits of the case. After a short adjournment, the Tribunal directed that evidence and submissions would be heard on the issue of the identity of the employer. The Tribunal also clarified  
30 that it had obtained information from a search at Companies House that Changes (Fife) Limited was registered at Companies House as having been dissolved.

35 14. During the proceedings, the respondent's representative made reference to documents which could have been produced on a number of occasions. The

Tribunal invited the respondent to make an application for adjournment if it was of the view that there were additional documents which would assist in establishing the correct identity of the employer. The respondent declined that opportunity.

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### **ISSUES TO BE DETERMINED**

15. The Tribunal was therefore required to identify the correct identity of the employer of the claimant. It was recognised by the parties that if the employer was Changes (Fife) Limited, then the claims could not proceed as the company no longer existed. It was also accepted by the parties that 'Beyond Beauty' was not a legal entity and simply the trading name of the shop in which the claimant worked.

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16. The question therefore before the Tribunal was whether the employer was Hazel Young trading as Beyond Beauty or Changes (Fife) Limited.

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### **FINDINGS IN FACT**

17. Having heard evidence from the claimant and considered the documents before it, the Tribunal made the following finds in fact:

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18. The claimant had been employed from February 2014 as a beauty therapist initially and then the Manager of a beauty salon which had initially been called Therapeutic and was subsequently renamed Beyond Beauty.

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19. Hazel Young was the owner of the salon and had employed the claimant.

20. The claimant was not at any time issued with a contract of employment, terms and conditions of employment or a letter of appointment.

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21. The claimant received payslips which referred only to 'Beyond Beauty'.

22. The claimant also received a P45 by email from Mrs Hazel Young which narrated the claimant's employer as "Beyond Beauty" and provided the address of the salon as the Employer's address.

5 23. At one stage in the claimant's employment, she went on a beauty course which cost in the region of £3000. An agreement was made between the claimant and Mrs Young that if the claimant left employment within a year, half that sum would be repaid to Mrs Young. This agreement was committed to writing but was not available to the Tribunal.

10 24. Mrs Young operated another business which was a hairdressing business in Fife.

25. Mrs Young had been looking to sell both businesses at the beginning of 2018.

15 26. The limited company Changes (Fife) Limited had been dissolved in October 2018. This was after the present claims had been raised. There was no intimation to the claimant, her solicitors or the Tribunal of the application to dissolve the company or the fact of its dissolution and removal from the register at Companies House.

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### **OBSERVATIONS ON THE EVIDENCE**

25 27. The Tribunal heard from Mrs Young on behalf of the respondent and the claimant. The evidence was limited to assisting the Tribunal in identifying the employer of the claimant and therefore the correct respondent in the case.

30 28. The Tribunal did not find Mrs Young to be a credible witness. Mrs Young had been advised by the Tribunal at the beginning of her evidence that during it she could not refer to a typed piece of paper which did not form part of the productions before the Tribunal. Nonetheless, during her evidence Mrs Young appeared to be seeking to refer to that document and when challenged by the Employment Judge sought to suggest that there was

nothing of relevance on the document and that the Tribunal could look at it if desired. The Tribunal declined that offer.

29. Further, Mrs Young was evasive in her evidence in particular under cross  
5 examination. She suggested that she could not remember the details of the  
agreement she reached with the claimant in relation to the repayment of the  
fees for the beauty course. However, she indicated that she was sure that the  
agreement was on headed notepaper of the third respondent with the name  
of the trading company on the paper. It seemed to the Tribunal that it was  
10 very unlikely someone who could not remember the details of an agreement  
in relation to repayment of a four figure sum, could remember what paper that  
agreement had been printed on. She also indicated that she had had a  
number of conversations with the claimant about the fact that Changes (Fife)  
Limited was the company which employed the claimant, but could not  
15 remember when these conversations had taken place or what the context of  
them might have been.

30. The Tribunal found the claimant to be a straightforward witness. Therefore,  
where there was any conflict between the evidence of the claimant and  
20 Mrs Young, the Tribunal preferred the evidence of the claimant.

## **SUBMISSIONS**

31. The parties made brief submissions summarising the evidence. Mr Anderson  
25 for the claimant, suggested that all roads led to Mrs Young as the employer.  
Mr Young, on behalf of all respondents indicated that Changes (Fife) Limited  
was clearly the employer and that he didn't understand why this had to be  
argued as it was so clear.

## **DISCUSSION AND DECISION**

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32. The Tribunal concluded that there was no evidence linking the claimant's  
employment to Changes (Fife) Limited.

33. The respondents produced a certificate of incorporation of the company. They also produced what bore to be a draft financial statement as at 28 June 2018, with a letter from an accountant. However, there was nothing in that information to link the company or the accounts to the place at which the claimant worked. The Tribunal was advised that the respondent had another  
5 business premises, which was a hair salon and there was no evidence before it that the accounts related to Beyond Beauty rather than or together with the hairdressing salon which traded under a different name.

10 34. Further, although the income statement made reference to 'Staff Costs', there was no detail provided in relation to whom those staff costs referred. The statement referred to a cost of £20,089 in respect of staff and the Tribunal bore in mind that the evidence of Mrs Young was that normally Beyond Beauty was staffed by 3 individuals, and that the claimant was said in her P45  
15 to have been paid almost £13,000 for the 11 months of the relevant tax year. There was no evidence about how the hair salon was staffed. It therefore seemed unlikely to the Tribunal that the staff costs referred to related to Beyond Beauty.

20 35. The Tribunal was also mindful of the fact that no steps had been taken to advise the claimant or her representatives of the proposed dissolution of the company despite the fact that the respondents were represented initially by an HR consultant and briefly by a solicitor.

25 36. The respondent argued that a series of text messages made clear that the claimant must have reviewed information on Companies House which would have made clear that she was employed by Changes (Fife) Limited.

30 37. However, the claimant's evidence was that she had the same accountant as the respondents and that was when she had information as to the financial situation of the salon. She indicated she could not remember seeing any documentation which made reference to Changes (Fife) Limited being her employer. The Tribunal preferred the evidence of the claimant in this respect.

38. Most persuasively however, there was no paperwork before the Tribunal which suggested that the claimant was employed by a limited company. Her payslips and her P45 all referred to 'Beyond Beauty' and made no reference to a limited company. She had not been issued with any contractual documentation during her 4 years of employment. She only dealt with Mrs Young and had no dealings with her husband who was the co-director of the company, Changes (Fife) Limited.

39. In all the circumstances, the Tribunal concluded that the claimant was employed by Hazel Young, trading as Beyond Beauty and the case should now be listed for a hearing on the merits to consider the claimant's claims.

Employment Judge: Amanda Jones  
Date of Judgement: 04 April 2019  
Entered in register: 05 April 2019  
And copied to parties