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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4113089/2018

Held in Glasgow on 25 April 2019

Employment Judge: David Hoey

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Miss T McCulloch

**Claimant
In Person**

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Mr Harpreet Ray

**First Respondent
Not Present and
Not Represented**

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Mmm Retail Limited

**Second Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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- (1) The second respondent was the claimant's employer as at the date of her dismissal and the claim against the first respondent is therefore dismissed.
- (2) The claim of unfair dismissal against the second respondent is successful and the second respondent is ordered to pay the claimant £7,910 (SEVEN THOUSAND NINE HUNDRED AND TEN POUNDS).
- (3) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to the award, as the claimant
E.T. Z4 (WR)

received Universal Credit. The prescribed element is £7,000 (SEVEN THOUSAND POUNDS) and relates to the period from 4 May 2018 to 26 April 2019. The monetary award exceeds the prescribed element by £910 (NINE HUNDRED AND TEN POUNDS).

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REASONS

1 This case called as a Remedy Hearing there having been no response lodged
on behalf of either respondent. Neither respondent was represented and the
10 claimant was in attendance herself. She had brought a number of productions
to which reference was made.

2 The Hearing began by identifying what the issues to be determined were. It
was agreed these were:

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(1) Who was the claimant's employer as at the date of dismissal on 4
May 2018?

(2) What compensation should be awarded in respect of the claimant's
claim for unfair dismissal (which was the only claim she was
20 raising)?

Findings in fact

3. I heard evidence from the claimant and find the following facts proven on the
25 balance of probabilities

4. The claimant began her employment in June 2014. She knew the business,
which was a local shop and asked about vacancies. She was initially
employed by the first respondent, who was an individual. Following an
30 interview she was told she was successful and would work in the shop. She
was asked to sign a document. The claimant signed the document which she

thinks was a contract with the first respondent but she was not given a copy of it.

5. Her salary was paid directly into her bank account and the source of these funds varied. The claimant knew that the first respondent changed businesses and these different businesses would pay the claimant. No other documents were issued to the claimant during her employment.
6. From 5 March 2017 until her dismissal on 4 May 2018 the claimant was paid by the second respondent (albeit pay slips were very sporadic). The claimant understood that the second respondent was her employer. The P45 that was eventually issued to the claimant had the second respondent as her employer.
7. The claimant was dismissed on 4 May 2018 by her P45 being issued to her.
8. The claimant earned £140 gross a week. She was 49 as at the date of her dismissal and had 3 complete years of service.
9. The claimant tried to find alternative employment following her dismissal. She attended the Job Centre and looked around. She sought shop work and applied for 8 similar vacancies, all without success. She decided to attend college and has now secured alternative work, which will pay £300 gross a week in a local care home. That new work will commence on 6 May 2019.
10. Following the claimant's dismissal and with effect from June 2018 the claimant was paid Universal Credit on a monthly basis. The sum of £497 was paid to her in this regard (from June 2018 until April 2019). She has therefore received 11 monthly payments.

11. In terms of Rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 where no response is presented an Employment Judge can determine the claim and issue judgment accordingly.
- 5 12. Where a claimant has been unfairly dismissed, a claimant is entitled to a basic award (calculated in accordance with 119 of the Employment Rights Act 1996) and a compensatory award (calculated in accordance with section 123 of the Employment Rights Act 1996).
- 10 13. If a claimant has been in receipt of relevant benefits since her dismissal the Employment Protection (Recoupment of Benefits) Regulations 1996 apply to ensure that the respondent repays to the Government the sums that were paid to the claimant by way of specific benefits, including Universal Credit.

15 **Decision**

14. It is clear from the evidence presented to the Tribunal that the claimant was employed by the second respondent as at the date of her dismissal. While the first respondent appears to have initially have employed the claimant, the claimant accepted that her employer changed and latterly (up to her dismissal) she was employed by the second respondent. The second respondent paid the claimant and was confirmed in her P45 as her employer. The claimant accepted she believed the second respondent employed her albeit her employer appeared to change regularly. The claim against the first respondent is therefore dismissed as the first respondent was not her employer as at the relevant date.
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15. In the absence of a response from either respondent, the Tribunal finds that the claimant was unfairly dismissed. She is therefore entitled to compensation. This is calculated as follows.
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Basic award

16. The claimant completed 3 years of service. She was 49 years of age. Her gross weekly wage was £140. The basic award is therefore $3 \times 1.5 \times £140$ which is £630.

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Compensatory award

17. Further to section 123(1) of the 1996 Act, the amount of compensation is that which the Tribunal considers to be just and equitable in all the circumstances “having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer”.

18. I am satisfied that the claimant mitigated her loss by seeking alternative employment and then retraining. She has secured more remunerative employment which commences on 6 May 2019. It is just and equitable to award 52 weeks’ pay which amounts to $52 \times £140$ which is £7,280. That is just and equitable in all the circumstances.

19. The total compensation payable is therefore £7,910.

Recoupment

20. For recoupment purposes, the monetary award is £7,910 and the prescribed element is £7,000 (the amount of compensation up to today’s date – 50 week’s pay). The dates of the period to which the prescribed element is attributable is 4 May 2018 to 26 April 2019. The relevant government department will serve a notice on the respondent stating how much is due to be repaid in respect of jobseeker’s allowance.

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21. In the meantime, the respondent should only pay to the claimant the amount by which the total monetary award exceeds the prescribed element (namely

£910). The balance will be payable when the respondent receives the said notice.

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Employment Judge

David Hoey

Date of Judgment

26 April 2019

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**Entered in register
and copied to parties**

29 April 2019

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