



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4105758/2016**

**Preliminary Hearing Held at Edinburgh on 19 August 2019**

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**Employment Judge I McFatridge**

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**Mr Andrew Hamilton**

**Claimant  
Represented by  
Mr Wells,  
Solicitor**

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**Morningside Masonic Association and others**

**Respondents  
Represented by  
Mr McDougall,  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the claimant was neither an employee of the  
30 respondents nor a worker providing services to them.

**REASONS**

1. The claimant submitted a claim to the Tribunal in which he claimed that he had  
been unfairly dismissed by the respondents. He also claimed that he was due  
35 arrears of salary and holiday pay and notice pay as at the date of his dismissal.

The respondents denied the claim. It was their position that the claimant had  
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been neither an employee nor a worker providing services to them. It was the respondents' position that the claimant was a volunteer. They sought a preliminary hearing on employment status. A preliminary hearing was fixed for the purpose of determining the claimant's employment status and this took place on 19 August. The claimant gave evidence on his own behalf. Mr Charles Black and Ralph Shaw both committee members of the respondents and as such also individual respondents gave evidence on behalf of the respondents. Each side lodged a bundle of productions. I have referred to the respondents' productions by page number with the prefix R, I have referred to the claimant's productions with the page number and prefix C. On the basis of the evidence and the productions I found the following essential facts to be proved or agreed.

2. The respondents are an association of masonic lodges. They are based at a property in Morningside and their purpose is to look after the property which is used by a number of individual lodges. The constitution was lodged R34A-R34F. Their byelaws were also lodged R29-34. The respondents are run by a committee most of which consists of members of the individual lodges who are nominated to sit on it. The committee also contains a Treasurer, Secretary and Chairman and Vice Chairman. All members of the committee and office bearers are volunteers.
3. The claimant became Treasurer of the organisation in or about 2000. The claimant carried out the duties of Treasurer from then until around 2015. Each year the committee would decide whether to give the Treasurer and Secretary an honorarium for the work they carried out. I did not hear evidence about every year but in most years the committee voted to give the Secretary and Treasurer an honorarium of £250 each. This sum was calculated to cover expenses. The claimant received the sum of £250 as an honorarium for his work as Treasurer. Although he received an honorarium the claimant made it clear during the hearing that he carried out the work of Treasurer as a volunteer.

4. As Treasurer the claimant was solely responsible for writing cheques and for the production of the annual accounts. He would provide information to an external accountant who produced the actual accounts.
5. From around 2000 onwards the claimant also acted as Property Manager. The property required a considerable amount of maintenance. The claimant would arrange for this work to be carried out and would sometimes do the actual work himself. Although it is not clear from the pleadings the claimant made it clear during his evidence that he carried out this work as a volunteer and was not expecting payment for it.
- 10 6. The respondents' premises are licensed. They are used for masonic functions. They are also rented out on a semi-regular basis for 18<sup>th</sup> and 21<sup>st</sup> birthday parties. In addition they are regularly rented out to a dance class which happens twice a week. The dance class does not use the licensed part of the building.
- 15 7. At some point after 2000 licensing laws changed. One of the results of these changes was that the respondents had to appoint a "premises manager" who would be legally responsible to the licensing board for the way the sale of licensed beer, wines and spirits was dealt with in the premises. The premises manager required to hold a personal licence. The respondents' byelaws were changed so as to provide that the committee would elect from among the members a personal licence holder who required to hold a personal licence (para 8D). The claimant took the course to be the holder of a personal licence and was premises manager from the point where this was a requirement.
- 20 8. As premises manager the claimant arranged for staff to be on duty for 18<sup>th</sup> and 21<sup>st</sup> birthdays. He was also legally responsible for ensuring the terms of the licence were met. Staff hired by the claimant were paid on a casual basis. None of them were given formal letters of appointment apart from one who asked specifically for a contract and was given one by the claimant. The claimant did this without any reference at the time to the committee.
- 25 9. At all times the committee understood the claimant was carrying out his duties as premises manager as part of his voluntary role on the committee. The board
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were entirely unaware of any payments being made to the claimant if, indeed, any were made. No contract of employment was ever entered into between the claimant and the board and the committee.

- 5 10. At some point the claimant caused to be prepared a PAYE record showing payment to himself of £500 per month from the committee. This was never authorised by the committee. It is unclear whether any sums were paid to the claimant and if so how much.
11. As noted above the claimant presented annual accounts as Treasurer every year.
- 10 12. The annual accounts year 2006/2007 were lodged (page 53-54). These showed total wages for the year of £3558. If, as contended by the claimant, the claimant was being paid £500 per month the wages figure would require to be at least £6000. The figure of £3488 is consistent with payments being made to casual bar staff and no wages whatsoever being paid to the claimant.
- 15 13. The accounts for the year from June 2007 to May 2008 were lodged (C55-56). The wages figure for the year is £4228. As noted above the figure would require to be at least £6000 if the claimant's contention that he was being paid £500 per month were true. The figure shown is compatible with the sums which would be paid to casual bar staff £4228 and the claimant being paid nothing.
- 20 14. The claimant lodged a minute which purported to be a meeting of the respondents held on 15 May 2006 (C47-C48). There is an entry on C47B which contains the words "And to set up a PAYE account with a salary to be paid to an appointed bar person (A Hamilton). This had already been actioned some time back." The respondents lodged a document which bore to be a  
25 minute of the same meeting (page 149-151). Although in many ways identical to the version lodged by the claimant it is in a different typeface and does not include the words set out above which are solely in the claimant's version. My finding is that the respondents' version is the correct one and that the version lodged by the claimant has been altered so as to include the words mentioned.

15. The claimant lodged a document which bore to be minutes of a meeting of the respondents on 15 February 2010. It refers to a discussion about a letter which had been received from a lodge in respect of licencing matters. It contains a statement at the end stating

5            “It was agreed that brother Hamilton remained an employee of the MMA as a bar person.”

The respondents lodged a document which bore to be a minute of the same meeting (R157-158). It is once again identical save that it does not include the words in inverted commas above. My view was that the respondents’ version of the minute was accurate and that the version lodged by the claimant had been altered subsequent to its production.

10            16. In 2015 the claimant was suspended from membership of his lodge. A letter was written from the Provincial Grand Lodge of Edinburgh to the respondents regarding the claimant which was lodged (R135). This is dated 29 July 2015.

15            The claimant’s membership of masonic organisations was suspended and he was unable to remain as Treasurer. The claimant continued to carry out his work as manager of the building arranging for the appropriate maintenance work to be done and also his work as premises manager. At some point he advised the new Treasurer that he was due to be paid £500 per month. He

20            said that he had previously written himself a cheque for this amount each month. The respondent committee indicated to the claimant that they had been unaware of this payment. They had a number of meetings to discuss the issue. During these meetings the committee was split. There was a general appreciation that the claimant had carried out a considerable amount of work

25            for the respondents over the years. Some of the committee wanted him to be paid and some did not. Eventually the respondents sent the claimant a letter dated 27 October 2016 asking him not to carry out any further work.

17. Subsequently the respondents reported the matter to the police however after investigating the police decided to take no action against the claimant.

**Matters arising from the evidence**

18. In this case there was a stark factual dispute between the parties. The claimant's position was that from the time he became premises manager he was paid at the rate of £500 per month. He stated that as Treasurer he had the ability to write cheques and he simply wrote a cheque to himself for this amount every month. He stated that various PAYE documents had been created by the respondents' accountants. He lodged minutes which supported his case. When asked where these minutes came from he said that after he had ceased his involvement with the respondents he received an envelope which had these minutes in it. He did not know who had sent them.
19. His position in evidence in chief was that the board had known what was going on at the time and had been happy with this. During evidence in chief it was unclear as to whether he was seeking payment in his role as premises manager or his role as buildings manager or both. During cross examination he accepted that he carried out his work as buildings manager and as Treasurer on a voluntary basis. He maintained his position that he was due to be paid £500 per month as premises manager and that as such he was an employee. He maintained his position that he had no idea who had sent him the minutes. His position was that the respondents' version of the minutes must have been doctored and that his version was correct. When asked how the respondents' management committee would know that he was being paid £500 per month when he wrote the cheque himself he said that they would know this from the annual accounts. The annual accounts were then put to him. Initially he claimed not to see the problem but then said that what must have happened was that there wasn't enough money in the bank to pay him in full each month and that any arrears would be carried forward and paid out the following June when the subscriptions came in.
20. During cross examination the claimant was generally not prepared to answer questions the answers to which did not suit his case and I considered some of his answers to be flippant and demonstrated the desire to avoid answering the questions. I did not find him to be a credible or reliable witness.

21. On the other hand I found both of the respondents' witnesses to be careful witnesses who endeavoured to properly answer the questions which were put to them. One of the difficulties was that they had not been on the board for most of the time when the claimant had been Treasurer. They could only speak to what had happened on the board since then. It is clear to me from their evidence that the board had been somewhat dumbstruck by the suggestion from the claimant that he was getting paid £500 per month. Both witnesses were quite candid in saying that the claimant did do a vast amount of work at the lodge and that over the years his work had been appreciated. They candidly said that some people on the board felt that the claimant ought to be paid. Others wanted to establish what the legal position was. At the end of the day however it appeared to be that it was factually clear that there was no evidence to suggest that anybody on the board knew at the time that the claimant was taking any payment. I considered that the evidence of the accounts was absolutely crucial. The evidence was to the effect that the respondents employed casual bar staff. Both witnesses agreed that the figures quoted would be about right for casual bar staff attending 18<sup>th</sup> and 21<sup>st</sup> birthday parties which were functions held on a regular basis. There was absolutely nothing in the accounts to suggest that the claimant was being paid £500 per month. I rejected the claimant's explanation. I only had two years' worth of accounts but I would have thought that a shortfall in one year would be followed by a greater amount the following year. Given the amounts involved there was simply nothing left for the claimant. This meant either that the claimant was not getting paid the £500 as he stated or alternatively that he was taking £500 but that the amount was being hidden in the accounts so that it was not obvious as wages. In my view either way meant that the respondents would be unaware from the accounts that the claimant was getting paid any kind of wage for the work he was doing.
22. With regard to the minutes the claimant's evidence regarding being sent these was particularly unconvincing. On the other hand the respondents' witness indicated that he had obtained the committee's copy from the Chairman at the time. I am not in a position to make a finding that the claimant has deliberately

altered these documents however on the balance of probabilities I certainly find that the respondents' versions of the minutes are correct.

### **Discussion and decision**

23. Although this is a case about employment status it is unusual in turning almost  
5 exclusively on the view I take of the facts. I accepted the respondents' representative's suggestion that the burden of proof was on the claimant to show that he was an employee. I did not find the claimant to be a credible or reliable witness. The only documentary evidence which supported his case was in my view fabricated. Whilst I can understand that given the amount of  
10 work the claimant had carried out for the organisation over the years he may well have felt extremely put out by the fact of his suspension and believed that he had been treated ungenerously I do not consider that he has in any way established that he was an employee nor has he established that he was a worker providing services to the respondents. The key point about a contract  
15 of employment, like any other contract, is that there is an agreement between the parties. In this case there was no agreement. The committee could not agree to something they did not know about. If the claimant had started paying himself £500/month then common sense would suggest that as Treasurer of a voluntary organisation he would ensure there was a clear vouched paper trail  
20 showing the committee were aware of what was going on and had agreed to it. The absence of this is telling. The claimant was acting as a volunteer. He was carrying out this work as an extension of his unpaid voluntary work as Treasurer. Given that the claimant was neither an employee nor a worker the case fails and the claim is dismissed.

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**Date of Judgement: 28<sup>th</sup> August 2019**  
**Employment Judge: I McFatridge**  
30 **Date Entered in Register: 30<sup>th</sup> August 2019**  
**And Copied to Parties**