



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4123830/2018**

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**Held in Glasgow on 3 February 2020**

**Employment Judge W A Meiklejohn**

10 **Mr R Cowan**

**Claimant  
In Person**

15 **McTear Contracts Limited**

**Respondent  
No appearance and  
No representation**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is as follows:

25 (a) The claimant's application under Rule 70 contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is granted and the Judgment of the Employment Tribunal dated 15 October 2019 is varied as set out in the next paragraph.

(b) Paragraphs (iii) and (iv) of the said Judgment dated 15 October 2019 are deleted.

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### **REASONS**

1. This case came before me for a hearing to deal with the claimant's application for reconsideration of my earlier Judgment dated 15 October 2019. That application was dated, and had been submitted to the Tribunal on, 14 October 2019 and followed a hearing on 11 October 2019 at which I gave oral reasons.

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

2. Notice of the hearing on 3 February 2020 had been sent to both parties on 2 December 2019. At 10.00am on 3 February 2020 neither party was in attendance. I instructed the clerk to contact both parties. The claimant advised that he would attend within an hour. The respondent's director Mr  
5 Mr McTear advised that he was unable to attend, and said that he had been advised that the hearing was to take place on 7 February 2020. Mr McTear did not say when and by whom he had been so advised.
3. In these circumstances, I was satisfied that both parties had been given notice that the hearing would commence at 10.00am on 3 February 2020. I decided  
10 that it was consistent with the overriding objective in Rule 2 to deal with cases fairly and justly, including avoiding delay so far as compatible with proper consideration of the issues, that the hearing should proceed in the absence of the respondent. Accordingly, the claimant having attended at the Tribunal, the hearing commenced at 11.10am on 3 February 2020.

15 **The hearing on 11 October 2019**

4. At the hearing which took place on 11 October 2019, I heard evidence from the claimant and, for the respondent, from Mr McTear, director, and Mr N Litterick, general manager.
5. I decided that the claimant was entitled to be paid £750.00 of wages and  
20 £150.00 of holiday pay and awarded the said sums in terms of paragraphs (i) and (ii) of my Judgment.
6. After two adjournments during the hearing on 11 October 2019, Mr McTear produced to me a contract of employment and a training agreement, both of which bore to have been signed by the claimant on 13 January 2013. The  
25 claimant disputed the authenticity of these documents but I decided to accept them as genuine.
7. The effect of the training agreement was that the claimant was obliged to repay to the respondent the cost of training paid for by the respondent if he left employment within 12 months of the date of the training.

8. The claimant had undertaken training, paid for by the respondent, in September 2018. Under the terms of the training agreement, he was required to repay 100% of the cost of training provided within 3 months prior to leaving employment.

5 9. The cost of the said training paid for by the respondent was £730.00 (net of VAT) and I decided that the respondent was entitled to recover this sum from the claimant, all in terms of paragraph (iii) of my said Judgment. In terms of paragraph (iv) of my said Judgment, I found that no monies were payable by the respondent to the claimant as the said sum of £730.00 would exceed the  
10 net sums otherwise payable by the respondent to the claimant in terms of paragraphs (i) and (ii) of my said Judgment.

### **The hearing on 3 February 2020**

10. At the hearing on 3 February 2020, I heard evidence from the claimant, who I found to be a credible witness. The claimant had submitted to the Tribunal  
15 with his application for reconsideration a letter dated 14 October 2019 from HM Revenue and Customs which provided details of his income for the tax year ended 5 April 2014. This letter recorded that the claimant had been employed by CCG Scotland Ltd until 17 January 2014 and by the respondent from 20 January 2014.

20 11. I accepted the claimant's evidence that these dates were correct and accordingly that the contract of employment and training agreement produced by Mr McTear at the hearing on 11 October 2019 could not be genuine because the claimant was not employed by the respondent on 13 January 2013. I also accepted the claimant's evidence that his bank statements from  
25 2013 showed that he had been paid throughout that year by CCG Scotland Ltd.

### **Decision**

12. As my original decision was made on the basis that the training agreement was genuine but I was now satisfied that this was not the case, it was  
30 appropriate to vary that decision by deleting paragraphs (iii) and (iv) of my

Judgment dated 15 October 2019. The effect is that the claimant is entitled to receive from the respondent the said sums provided for in paragraphs (i) and (ii) of my said Judgment.

5            **Employment Judge : W A Meiklejohn**  
              **Date of Judgment    : 05 February 2020**  
              **Date sent to parties  : 06 February 2020**

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