



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104947/2018

5

Held in Glasgow on 17 October 2018

Employment Judge: Robert Gall

10 **Ms S Hoare**

**Claimant
In Person**

TN Trawlers Ltd

**Respondent
Not Present and
Not Represented**

15

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant was not employed by the respondents TN Trawlers Ltd at time of termination of her employment in October of 2014. The claim of unfair dismissal cannot therefore proceed against that entity. The application by the claimant to sist the claim for 2 months to enable her potentially to apply to the Court for restoration to the Register of Scallops Direct Scotland Limited is granted. The case is therefore sisted for 2 months.

As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the Hearing itself or by written request presented by any party within fourteen days of the sending of the written record of the decision. No request for written reasons was made at the Hearing. The following sets out what was said, after adjournment, at the conclusion of the Hearing. It is provided for the convenience of parties.

REASONS

1. This case called on 17 November 2018 for a Preliminary Hearing in relation to identity of employer.

E.T. Z4 (WR)

2. There had been a postponement request by the respondents. That application had been refused. It had been confirmed to the respondents that their application had been refused.
3. At the time of the Hearing there was no appearance by or on behalf of the respondents. The clerk telephoned the number on file for the respondents. She was not able to speak to anyone. She did however leave a message on voicemail requesting that the respondents call the Tribunal. No return call was however received. There had been no call to the Tribunal prior to 10am to explain the potential absence of the respondents. There had been no e-mail sent to the Tribunal before or after 10am explaining non-appearance.
4. The case commenced at 10.30am. Evidence and submissions were completed by 12 noon. There remained no contact from the respondents and no appearance by them or on their behalf.
5. At the Hearing, the claimant gave evidence. She lodged productions.
6. On the evidence I determined that the claimant was employed as an Accounts Clerk/Manager. Her employer was TN Trawlers Ltd. She commenced employment with them in February 2008. The offer letter to her was written on behalf of TN Trawlers Ltd (Document 2). The contract of employment was between the claimant and that entity. It was signed by both parties. (Document 3). The claimant's email address throughout the period of her employment, whether with TN Trawlers limited or Scallops Direct Scotland Limited was at the domain name "*tntrawlers.ltd.uk*".
7. The claimant was paid her salary through a company J J Marine Ltd. That was an administrative arrangement however. Funds came from TN Trawlers Ltd to meet that and other sums paid by J J Marine Ltd. Those funds from TN Trawlers Ltd covered tax and national insurance paid in respect of the claimant. Those amounts were then paid by J J Marine Ltd.
8. The claimant was aware of these arrangements given her role. She was aware that there was a charge back arrangement in place between TN Trawlers Ltd and J J Marine Ltd.

9. In the summer of 2013 there was a development by Mr Nicholson, the principal behind the various companies mentioned in this Judgment. That led to the setting up in July of 2013 of a limited company with the name Scallops Direct Scotland Ltd.
- 5 10. The claimant commenced work with Scallops Direct Scotland Ltd in September of 2013.
11. Her role with that company was different to the role she had with TN Trawlers Ltd. She was the Factory Manager with Scallops Direct Scotland Ltd. She moved away therefore from dealing with what she had dealt with and the
10 duties which she had as Accounts Clerk/Manager with TN Trawlers Ltd. Her working hours involved work solely for Scallops Direct Scotland Ltd. The contract of employment signed by both the company and the claimant (Document 13) confirmed the claimant's employers as Scallops Direct Scotland Ltd. That contract also confirmed that her previous service with TN
15 Trawlers Ltd counted for her length of service. There was reference to TUPE in being applicable. The claimant therefore had continuity of service.
12. Although the contract of employment between the claimant and Scallops Direct Scotland Ltd referred to her previous employer as having been J J Marine Ltd, something which she disputed, that does not invalidate there
20 having been a TUPE transfer and the claimant's new employer being Scallops Direct Scotland Ltd with effect from September of 2013.
13. The claimant worked for Scallops Direct Scotland Ltd as the Factory Manager until October 2014. In September of 2014 disciplinary proceedings had started against her. Those led to dismissal. It is that dismissal which forms
25 the basis of this claim.
14. Scallops Direct Scotland Ltd was dissolved on 15 March 2016.
15. Time has passed in this claim as the original unfair dismissal claim brought by the claimant did not proceed as a result of non-payment of fees by her. That claim has been reinstated after the imposition of fees was confirmed as

having been illegal. That explains time having passed prior to this Preliminary Hearing.

16. The issue or question for the Tribunal was whether the claim of unfair dismissal had been properly brought against TN Trawlers Ltd.
- 5 17. My view on the evidence and the documents spoken to in evidence was that the employer of the claimant at date of termination of her employment was Scallops Direct Scotland Ltd. That was the claimant's own evidence. That company is therefore the party against whom a claim of unfair dismissal would properly be brought.
- 10 18. I do not see on the evidence in documents that the party potentially reliable for the claim of unfair dismissal could be TN Trawlers Ltd.
- 15 19. The re-arrangement and employment of the claimant by Scallops Direct Scotland Ltd may have been a cynical arrangement. That is certainly the view of the claimant. It is my view on the evidence that her employer at the time of dismissal was Scallops Direct Scotland Ltd.
20. If the sole or principal reasons for dismissal was a transfer in terms of TUPE, then there has been an automatically unfair dismissal. That however would remain a claim against Scallops Direct Scotland Ltd.
- 20 21. I appreciate that the claimant regards the setting up of Scallops Direct Scotland Ltd, her employment moving to that company, the setting up of a company D & G Seafoods Ltd, her dismissal and then dissolution of Scallops Direct Scotland Ltd and what had been their business then being done by D & G Seafoods Ltd as a grand plan to leave her with a worthless claim against Scallops Direct Scotland Ltd.
- 25 22. If she is right in her view, that is reprehensible conduct. I am unable however to form a view on that proposition and it is not necessary for determination of that point to take place having regard to the purpose of this PH.

23. The claim therefore lies against Scallops Direct Scotland Ltd as the employer of the claimant at the time of termination of her employment in October of 2014.

5 24. The claimant sought to sist this claim while she considers applying to the Court to restore Scallops Direct Scotland Ltd to the register. The claimant is therefore sisted for 2 months to enable her to take advice and potentially to take that step.

10 Employment Judge:
Date of Judgement:

Robert Gall
22 October 2018

Entered in Register,
Copied to Parties:

24 October 2018