



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111616/2019

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Held in Glasgow on 6 January 2020

Employment Judge R Gall

10 **Mr M Lorusso**

**Claimant
In Person**

Hope Street Lease Ltd

**Respondent
Represented by:
Mr Douglas -
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Tribunal is that the hearing on 6 January is adjourned. A case management preliminary hearing is set down for 6 February 2020 at 9:30 AM. The case is sisted until that time.

REASONS

1. This is a claim brought by Mr Lorusso. He maintains that he had been in a position where he could legitimately resign and claim constructive unfair dismissal. He also sought payment in respect of unlawful deductions from wages which in his view had been made.
2. No ET3 was lodged by the respondents. Notwithstanding that, Mr Douglas, one of the directors of the respondents, appeared at the hearing. I explained the terms of Rule 21 (3) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 to Mr Douglas. That rule refers to the position where no ET3 has been lodged by a respondent. It states that the respondent “shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge”.

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E.T. Z4 (WR)

3. Prior to commencement of evidence, I explored with the claimant his length of service. In the claim form he refers to having been employed by the respondents between 1 June 2017 and 17 August 2019. He also said however that he did not work for the respondents between 15 April 2018 and 6 August 2018. He confirmed to me that between April and August 2018 there was indeed a gap in his service with the respondents. He did not argue, he confirmed, that he had continuity of service. I explained to him that in order to bring a claim of unfair dismissal, including constructive unfair dismissal, it was necessary for an employee to have over 2 years continuous service, except in certain specific limited circumstances. Mr Lorusso confirmed that he did not have the requisite service and did not therefore insist upon his claim of constructive unfair dismissal.
4. This left his claim in respect of unlawful deductions of wages. He confirmed to me that he continued to make this claim. The unlawful deduction was, he said, money which had been retained by the employer in respect of income tax and national insurance but which had not been accounted for by the employer to HMRC. Due to this, his tax records did not show that he had been earning during the period involved. This was of importance as he was seeking a permit to stay in the country and required to be able to prove that he had been employed.
5. The relationship between Mr Lorusso and Mr Douglas remains very cordial. That was confirmed by both gentlemen but was also apparent to me during the course of this hearing. With agreement from Mr Lorusso, I explored the position to a degree with Mr Douglas. Mr Douglas said that the current respondents, of whom he was a director, had employed the claimant only from April 2019. Prior to that the employer had been, as he understood it, MAP Solutions Ltd. The current respondents had not traded until 1 April 2019. They had only obtained their PAYE reference towards the end of March 2019. Mr Douglas said that he had been aware of the difficulty which the claimant had had and had sought to resolve the situation by tackling MAP about it. He had been assured that it would have been resolved by now. That clearly had not happened. Mr Douglas passed to me, and I exhibited to the claimant, a copy

of the P45 issued by the current respondents. Mr Douglas drew my attention to the fact that the correct PAYE reference number for the current respondents was on the P45. That did not coincide with the reference number on the communication from HMRC which the claimant had. Mr Douglas said that the current respondents had accounted appropriately for tax and national insurance. The claimant confirmed that that was so.

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6. It therefore appeared to me that the claim may well have been brought against the wrong party. I explained to Mr Lorusso that it was possible to seek to amend the claim to bring in MAP as a respondent. The claim would then require to be served upon them. Alternatively, if Mr Lorusso regarded the current respondents as being responsible, the claim could proceed. I would then require to consider to what extent, if any, the current respondents were able to participate in the proceedings. They had not lodged form ET3. In my view it would not have been appropriate to allow them to participate to the fullest extent given that they had not intimated that they defended the claimant and had not set out their defence by lodging form ET3. I asked if Mr Lorusso wished to have a little time to consider his position in light of the various matters aired to this point. He did not wish to have adjournment for that purpose.

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7. Mr Lorusso was clear. He said he trusted Mr Douglas and wished to have the case continued to permit Mr Douglas to try to resolve the situation in the background. Mr Douglas confirmed that he was happy to try to assist. Mr Lorusso asked whether he could seek in the future that MAP be added as a respondent. I confirmed that such an application could be made. It would then be considered by the Employment Judge who heard the application.

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8. No evidence had been taken by this point. It seemed appropriate to me to adjourn the hearing and to arrange a case management preliminary hearing. At that case management preliminary hearing, it can be determined whether an application is being made to add a further respondent. If that is so, any such application can be considered. I explained that the Tribunal would require to have details of the address of MAP if there was to be an application to add that entity as a respondent. It may be that consideration is given to the

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claim against the current respondents proceeding no further. The hope of Mr Lorusso, and indeed Mr Douglas, is that matters will be resolved prior this case management preliminary hearing.

5 9. The Clerk to the Tribunals is requested to fix a case management preliminary hearing for 9:30 on the morning of 6 February 2020, before me if possible. Possible addition of MAP would be considered, as would the continued involvement otherwise as respondent of the current respondents. A date for hearing might be set down. The case management PH will take place in person. The Clerk to the Tribunals is requested to write to parties with the relevant hearing notice confirming that date, time and length of hearing. The agenda will be to consider the present position in the case and any applications which might be made. Until the time arrives, if it does, when form ET3 is submitted by the current respondents, they can only participate in any further proceedings insofar as permitted by the Employment Judge.

10 10. I also highlighted to Mr Lorusso that consideration would require to be given to the nature of the claim he makes in respect of unlawful deductions. It seemed to me that it might be doubtful whether the Employment Tribunal had jurisdiction in relation to the claim as he brought it. His position was that monies which ought to have been paid to HMRC had been deducted
15 20 appropriately from his gross pay. Those monies had not however been paid by the employer to HMRC. My concern is that the monies were properly deducted from sums due to Mr Lorusso. They have been retained by his employer rather than being accounted for to HMRC.

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30 11. In those circumstances I would have concerns that there is a proper basis for proceeding with a claim in terms of the Employment Rights Act 1996. That however is a matter which can be considered, if necessary, at a future date.

Employment Judge:

R Gall

Date of Judgement:

06 January 2020

Entered in Register,

5 Copied to Parties:

07 January 2020