



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111500/2019

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Held in Glasgow on 18 March 2020

Employment Judge I McPherson

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Miss Haiqa Kashif

**Claimant
Not present and
Not represented**

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(1) Ali Zahid t/a Treatz Glasgow

**First Respondent
Not present and
Not represented
- No ET3**

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(2) Treatz Glasgow

**Second Respondent
Not present and
Not represented
- No ET3**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

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(1) The claimant's employer, as at the effective date of termination of employment, on 10 August 2019, was the first respondent, and the second respondent is accordingly dismissed from these proceedings, in terms of **Rule 34 of the Employment Tribunals Rules of Procedure 2013**, this Tribunal not being satisfied that there is any separate legal identity as between that trading name, and the first respondent as an individual trading as a franchisee of Treatz Franchising Limited under that business name.

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(2) The first respondent has failed to give the claimant itemised pay statements throughout her period of employment by him, between 20 April 2019 and 10 August 2019, contrary to **Section 8 of the Employment Rights Act 1996**, and the Tribunal grants a declaration to that effect in terms of **Section 12**.

- (3) Further, the first respondent has made an unauthorised deduction from the claimant's wages, including sick pay, contrary to **Section 13 of the Employment Rights Act 1996**, and the Tribunal grants a declaration to that effect in terms of **Section 24**, and the first respondent is ordered to pay the claimant the total sum of **ONE HUNDRED AND EIGHTY FIVE POUNDS, FIFTY PENCE (£185.50)**, as set forth in items 1 and 2 in her calculation provided to the Tribunal on 5 December 2019.
- (4) Finally, the first respondent has failed to pay the claimant's holiday entitlement, contrary to **Regulation 30 of the Working Time Regulations 1998**, and he is ordered to pay the claimant the further sum of **TWO HUNDRED AND SEVENTY SIX POUNDS, SEVENTY FIVE PENCE (£276.75)**, as set forth in item 3 in her calculation provided to the Tribunal on 5 December 2019.
- (5) The first respondent shall therefore pay to the claimant the grand total of **FOUR HUNDRED AND SIXTY TWO POUNDS, TWENTY FIVE PENCE (£462.25)**.

REASONS

Introduction

1. This case called before the Tribunal for a Final Hearing for full disposal, including remedy, if appropriate.
2. Following ACAS early conciliation between 17 August and 11 September 2019, the claimant presented an ET1 claim form, on 8 October 2019, against Ali Zahid, Treatz Dessert Parlour, Unit 9, 94 Farnham Road, Slough, London, GL1 3FQ, arising out of holiday pay, arrears of pay, and sick pay, that she claimed were due and outstanding to her at the termination of her employment by that respondent on 10 August 2019 as a waitress at Treatz Dessert Parlour, 492 Sauchiehall Street, Glasgow, G2 3LW.
3. That claim was accepted by the Tribunal on 10 October 2019, and a copy sent to that respondent, requiring him to submit a response by 7 November 2019. On 17 October 2019, the Employment Tribunal received an email from the

office administration at Treatz Franchising Limited, Slough, stating that the Notice of Claim, and Notice of Final Hearing for 11 December 2019, had been sent to them, but that was the wrong address, as Zahid Ali was stated to be the franchisee of Treatz Glasgow, and all employment issues for that store should be addressed to him at Treatz Glasgow, 492 Sauchiehall Street, Glasgow, G2 3LW.

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4. In those circumstances, following instructions from Employment Judge Mark Whitcombe, fresh Notice of Claim, and Notice of Final Hearing, for 11 December 2019, were sent to Ali Zahid at Treatz Glasgow, requiring a response to the Glasgow Tribunal office by 18 November 2019.
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Further Information requested from the Claimant

5. No ET3 response was received, by the due date or at all, and following referral to Employment Judge Mary Kearns, the Tribunal wrote to the claimant, on 22 November 2019, advising that no acceptable response to her claim had been received, and it was therefore possible to issue a Judgment without the need for a Hearing, however Employment Judge Kearns considered there was insufficient information to issue a Judgment at that stage, and she therefore required the claimant to set out all the sums she was claiming, and to show how she calculated them, and also to provide any payslips, or other documentary evidence of her wages, and to do so within 7 days, to allow a Judgment to be issued.
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6. The claimant, having been asked for further information, to be provided by 29 November 2019, she failed to do so, and, accordingly, following referral to Employment Judge Claire McManus, she ordered the claimant to provide that information, and, having considered the file, Employment Judge McManus also stated that she was considering whether it was in the interests of justice to add Treatz Glasgow as a further respondent in this case, because in terms of the email received from Treatz Franchising on 17 October 2019.
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7. The claimant was asked to respond to the Tribunal office by 6 December 2019 on her position as to whether the claim should continue against Ali Zahid only, or whether any other respondent should be added.

Additional Respondent added on the Claimant's application

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8. By email to the Glasgow Tribunal office, on 5 December 2019, the claimant confirmed that she would like to add Treatz Glasgow, 492 Sauchiehall Street, Glasgow, G2 3LW as a respondent.

9. She further stated that because she had received no payslips, and worked irregular hours, she had found it difficult to provide a precise calculation for the money owed to her by Treatz Glasgow/Ali Zahid, and she therefore set forth what she described as a fair assessment of what they owed her for her last week worked, sick pay, and holiday pay, as follows:

(i) Final week worked (24 hours @ £6.15) - £147.60

15 **(ii) Two days sick pay (15th – 20th June £94.2 weekly) - £37.90**

(iii) Holiday pay – 9 days (based on 113 days employment) - £276.75

Total - £462.25

10. Following referral to Employment Judge Mark Whitcombe, he instructed that the Final Hearing listed for 11 December 2019 be postponed, awaiting 28 days for an ET3 to be returned by Treatz Glasgow, as a further respondent, and fresh Notice of Claim, and Notice of Final Hearing, for Wednesday, 18 March 2020 at 2.00pm, was issued to both parties on 11 December 2019. The additional respondent, Treatz Glasgow, was advised that it should lodge an ET3 response with the Glasgow Tribunal office by 8 January 2020.

- 25 11. When no ET3 was received from Treatz Glasgow, by the due date, or at all, on 10 January 2020, Employment Judge Frances Eccles instructed a letter be sent to the claimant seeking further information to allow for a Judgment to be issued without the need for a Hearing. Reminders were thereafter issued to the claimant on 29 January 2020, 13 February 2020, and 24 February 2020,

when Employment Judge Muriel Robison directed that the claimant write to the Glasgow Tribunal office by 2 March 2020.

12. Further, that letter of 24 February 2020 advised that if the claimant provided the information requested, it might be possible to deal with her case without a Hearing, otherwise she would be required to attend on 18 March 2020 as per the letter of 11 December 2019, being Notice of Claim and Notice of Final Hearing for Wednesday, 18 March 2020, at 2.00pm. All of those letters to the claimant were sent to her by email, to the email address on the ET1 claim form.
13. When, despite Employment Judge Robison's clear direction, of 24 February 2020, the claimant did not respond, by 2 March 2020, a further, and final letter was emailed to the claimant, on 4 March 2020, stating that Employment Judge Laura Doherty had directed that as no response had been received from any of the correspondence that the Tribunal had sent to her, the claim would proceed to this listed Final Hearing, and the claimant was sent a further copy of the Tribunal's previous letters sent, both by email, and by copy put in the post.

Final Hearing before this Tribunal

14. When the case called before me at 2.00pm, on the afternoon of Wednesday, 18 March 2020, the claimant was not in attendance, nor represented. As no ET3 response had been lodged on behalf of either of the two cited respondents, no representation, or appearance by them, was anticipated, although had they attended, they would only have been allowed to participate in this Final Hearing to the extent permitted by me as the presiding Employment Judge.
15. There was, however, no appearance by, or representation from, either of the two cited respondents. As the claimant was not in attendance, nor represented, I had the clerk to the Tribunal telephone her at the mobile telephone number given on the ET1 claim form. The clerk advised that there was no reply to that number, and that the call could not be connected.

16. In those circumstances, I required to consider the terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**. If a party fails to attend or to be represented at a Hearing, the Tribunal may dismiss the claim or proceed with the Hearing in the absence of that party but, before doing so, the Tribunal shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the parties' absence.
17. From my perusal of the Tribunal case file, it was clear that the claimant had not responded to various letters from the Tribunal, seeking additional information from her, although, it has to be said, the Tribunal's various letters to her from 10 January 2020, to 4 March 2020, both dates inclusive, were seeking information which was already on the Tribunal case file, namely in the claimant's email to the Tribunal dated 5 December 2019, where she set forth the sums that she sought from the respondents, and how she had calculated those sums.
18. There was nothing on the Tribunal case file to indicate that the claimant had withdrawn her claim, or in any way sought to restrict the sums being claimed against the respondents, nor any indication that the claim had been settled via ACAS, or otherwise.

Discussion and Disposal

19. Having been unable to contact the claimant, to ascertain the reason for her non-attendance, or non representation at this listed Final Hearing, I could not infer that she had abandoned her claim, although it is fair to say that she was not, as a claimant should do, responding to correspondence from the Tribunal, such as to suggest that she was promptly and diligently pursuing her claim against the respondents.
20. While she had indicated the sums being sought, I had two cited respondents, and, without evidence from the claimant, I would have to make a judicial determination as to which of those two respondents was her former employer, and which of those two, if either, was the party against whom the Tribunal should issue a judgment in her favour, awarding compensation.

21. After careful consideration, I decided that it would not be appropriate to strike out her claim, in terms of **Rule 37 (1)(d)**, on the basis that it has not been actively pursued. No Strike Out warning had been issued to her by any of the other Judges who had dealt with this file. Equally, in terms of **Rule 47**, I
5 decided that it was not appropriate to dismiss her claim there and then, when I did not know the reason for her failure to attend or be represented.
22. Accordingly, doing the best I could, with the limited information available on the Tribunal file, I decided that in light of the email of 17 October 2019 from the office administration at Treatz Franchising Limited, Slough, it was more
10 likely than not that the claimant's employer at the date of termination of employment was the first respondent, Mr Zahid, whom they described as the franchisee of Treatz Glasgow, and that he is therefore the proper respondent, against whom Judgment should be granted in the claimant's favour.
23. On that basis, and in terms of **Rule 34**, I have dismissed the second
15 respondent, against whom I am not sure that they are, in any event, any different in identity from the first respondent, who clearly has been trading as an individual under the business name of Treatz Glasgow.
24. There being no ET3 response, and no information available to the Tribunal,
20 to challenge the claimant's calculations, at items 1, 2 and 3, of her calculation provided to the Tribunal, on 5 December 2019, I have granted awards in her favour payable by the first respondent. I have also made the other orders and declarations required to address all aspects of her claim against both respondents.

25 Employment Judge: I McPherson
Date of Judgement: 19 March 2020

Entered in Register,
Copied to Parties: 20 March 2020

