



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107511/2019

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Held in Glasgow on 4 June 2020 (in chambers)

Employment Judge I McPherson

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Mr James Wilson

Claimant

The New Ellwyn Ltd

Respondents

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: -

- 20 (1) The respondents having failed to comply with the Unless Order made by  
Employment Judge Ian McPherson dated 30 March 2020, and sent to them  
on 8 April 2020, the response is struck out and it is dismissed, pursuant to  
**Rule 38(1) of the Employment Tribunals Rules of Procedure 2013**. This  
judgment constitutes formal notice to the parties of the dismissal of the  
25 response as required by that Rule. In terms of **Rule 38(5)**, the effect of this  
dismissal judgment shall be as if no response had been presented by the  
respondents.
- (2) Accordingly, in terms of **Rule 21 of the Employment Tribunal Rules of  
30 Procedure 2013**, an Employment Judge has decided to issue the following  
judgment on the available material under **Rule 21**, having taken into account  
the claimant's additional information provided to the Tribunal on 16 December  
2019, further to its request for further information:-the claim succeeds, the  
respondents have made an unauthorised deduction from the claimant's  
wages, failed to pay his holiday entitlement, and failed to pay his notice pay,  
35 and the respondents shall pay to the claimant the total sum of **ONE**

**THOUSAND, NINE HUNDRED AND EIGHTY POUNDS, SEVENTY PENCE (£1,980.70).**

- (3) Further, the Tribunal instructs the clerk to the Tribunal to send a copy of this Judgment to the Registrar of Companies, at Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh EH3 9FF, for information, and consideration by the Registrar in respect of the respondents' application for strike off from the Register of Companies (company no. **SC 620103**).

### **REASONS**

1. This case was considered by me, in chambers, on Thursday, 4 June 2020. It had previously called before me on the morning of Monday, 30 March 2020, for a telephone conference call Case Management Preliminary Hearing, previously intimated to both parties by the Tribunal, by email of 23 March 2020, in light of the current **Covid-19** pandemic, in lieu of what should have been a full day's sitting of a Final Hearing, as previously assigned by the Tribunal by Notice of Final Hearing issued to both parties on 10 January 2020.
2. On 30 March 2020, the claimant was in attendance, on that telephone conference call, unrepresented, and unaccompanied, while Mr Saffier Ahmed, director, did not attend for the respondents, nor were they otherwise represented. After a few teething problems, getting connected, and after the clerk tried unsuccessfully to contact the respondents' Mr Ahmed, I was able to get the claimant only on the telephone, and conduct the telephone conference call Hearing. I agreed to proceed with the listed Hearing in the absence of the respondents, in terms of **Rule 47**, having considered the information available to me on the Tribunal's casefile, and the clerk having been unable to contact the respondents' representative, having sought to enquire into the reasons for his absence.
3. The claimant advised me, at that Preliminary Hearing, that he continued to insist on his whole claim proceeding against the respondents, as per his ET1 claim form, presented on 28 June 2019, together with further and better particulars intimated on 10 August 2019, complaining of breach of contract

(failure to pay notice pay), failure to pay holiday pay, and failure to pay arrears of pay / unlawful deduction from wages. His complaint of unfair dismissal had previously been dismissed by the Tribunal, on 18 October 2019, following a **Rule 27** order of Employment Judge Cowen, made on 4 October 2019, the claimant not having two years' continuous employment with the respondents, as required by **Section 108 of the Employment Rights Act 1996**.

4. Before the start of that Preliminary Hearing, I had pre-read and considered the Tribunal's casefile, including the ET1 claim form, the ET3 response, and the claimant's further and better particulars, intimated on 10 August 2019, as also the written Note and Orders made by another Judge at an earlier stage of these Tribunal proceedings. Other than the claimant's letter of 16 December 2019, there was no further information available to me, e.g. no respondents' reply to the claimant's letter quantifying his claim, and no Joint Bundle of Documents, despite same having previously been ordered by the Tribunal.
5. Both the claimant and Mr Ahmed had attended the previous public Preliminary Hearing, on identity of employer, held on 3 December 2019 before Employment Judge Claire McManus, where her written Note and Orders, dated 4 December 2019, were issued to all parties under cover of a letter from the Tribunal dated 5 December 2019. Judge McManus had made various case management orders for compliance by both parties in advance of this Final Hearing.
6. Judge McManus had removed from the proceedings a second respondent, G K R Foodstore Limited, per a Mr Amran Ali, the first respondents, the New Ellwyn Ltd accepting that they had employed the claimant for the period stated in his ET1 claim form. They had resisted his claim, submitting that he simply did not return to work.
7. I explained the nature of my powers at the Preliminary Hearing briefly, and for the assistance of the claimant, as an unrepresented, party litigant. He confirmed that he had received and read Judge McManus' previous Note and

Orders, and complied with her orders, whereas the respondents had not complied with them.

8. Arising from my pre-read of the Tribunal's case papers, I sought to clarify certain matters with the claimant, before the Preliminary Hearing then focused on further procedure required. The claimant advised me that he had received 5 £1,000 from the respondents, on 2 April 2019, but the balance of **£1,980.70** remained outstanding and unpaid as at that date. He asked me to grant Judgment in that amount against the respondents.
9. The claimant advised me that, in the event of success with his claim, in whole 10 or in part, he sought an award of compensation only from the respondents, as per his further and better particulars of 10 August 2019, where he sought the sum of **£1,980.70**, as confirmed in his letter of 16 December 2019 to Mr Ahmed, copied to the Tribunal and received on 18 December 2019.
10. I noted that, while not present nor represented at that Preliminary Hearing, 15 the respondents appeared to continue to resist the claim, as per their ET3 response presented to the Tribunal, on 1 August 2019, they having been his employer between 28 February and 4 April 2019.
11. At that Preliminary Hearing, I raised with the claimant the current status of the 20 respondents' company, given that an online search of Companies House disclosed that the company, while still active, was subject of a proposal to strike it off the Register of Companies, further to an application made by Mr Ahmed on 12 February 2020. The claimant stated he was unaware of that fact. I stated that a first Gazette notice had been published, on 18 February 2020, and unless cause was shown, the company would be struck off after 2 25 months, if no objection made by a creditor, such as the claimant.
12. Having no reason for the respondents' absence from that Preliminary 30 Hearing, and there having been no application for a postponement, but having regard to the respondents' failure to comply with the case management orders made by Employment Judge McManus, on 4 December 2019, I decided, of new, and in terms of **Rule 5** allowing an extension of time to be granted, to allow the respondents a period of 7 days from that date, i.e.

by no later than 4.00pm on Monday, 6 April 2020, to comply with order No.3 made by Judge McManus, and intimate whether or not they disputed the sum claimed for, or the claimant's basis of calculation, and, if so, to explain on what basis.

- 5 13. My Unless Order, as set forth in my written Note & Orders dated 8 April 2020, included the following orders:-

10 *(5) Further, in terms of **Rule 38**, the Tribunal orders that, **UNLESS** the respondents do so within that 7 day period, by writing to the Tribunal, by email, with copy sent to the claimant at the same time, then their ET3 response to this claim shall be dismissed without further order of the Tribunal, and the Tribunal will thereafter proceed to issue Judgment against them for the sum sued for by the claimant.*

15 *(6) If, however, the amount claimed by the claimant, in the sum of **£1,980.70**, is paid by the respondents to the claimant, **within 7 days**, and the claimant, on receipt of full payment writes to the Tribunal to formally withdraw his claim from the Tribunal, and agree to its dismissal by the Tribunal, under **Rule 52**, the claim will then come to an end without any further procedure before the Tribunal.*

- 20 14. Following the close of that Preliminary Hearing, the claimant emailed the Glasgow Tribunal office, later on 30 March 2020, forwarding for my attention a copy of his email to Companies House, advising them that he objected to strike off of the company, as they had not informed him of their application, and they still owed him monies.

- 25 15. My written Note and Orders, giving orders and directions at that Preliminary Hearing, dated 30 March 2020, were issued to both parties under cover of a letter from the Tribunal dated 8 April 2020. As there was an administrative delay in issuing my Note & Orders, the Tribunal's covering letter stated that the time for the respondents to comply with a **Rule 38** Unless Order was extended by 7 days after issue, i.e. **by no later than 4pm on Wednesday,**
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15 April 2020. A copy of my Note and Orders were sent to the Registrar of Companies, given the ongoing litigation between the parties at this Tribunal.

5 16. On the casefile being referred back to me, on 4 June 2020, for further instructions, I noted that there had been no response from the respondents to that Unless Order by 15 April 2020, or at all to current date, and no intimation from the claimant that he had been paid the outstanding sum of £1,980.70, and that he was accordingly withdrawing his claim. In these circumstances, on the material available to me, I decided it was appropriate to grant judgment in the claimant's favour for the sum of **£1,980.70**.

10 17. I further noted, from an updated search on the online Companies House website, that the respondent company is still shown as active, but with an active proposal to strike off, notwithstanding the online record shows that, on 15 16 April 2020, the voluntary strike off action had been suspended. In these circumstances, I have again instructed that a copy of this judgment be sent to the Registrar of Companies, given the ongoing litigation between the parties at this Tribunal has now resulted in this judgment against the respondents being granted in the claimant's favour.

20 Employment Judge: I McPherson  
Date of Judgement: 08 June 2020  
Entered in Register,  
25 Copied to Parties: 10 June 2020