



# EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107270/2020  
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Case No: 4107270/2020  
Held at Glasgow by CVP on 2 August 2021  
Before Employment Judge O'Dempsey

**R Martin**

**Claimant**  
**J Stevenson (solicitor)**

**The Greenhouse Community CIC**

**Respondent (1)**  
**Did not attend**

**Greenhouse Services Limited**

**Respondent (2)**  
**Did not attend**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON PRELIMINARY ISSUE

The judgment of the Employment Tribunal is that the claimant was employed by the first respondent and not by the second respondent which is accordingly dismissed from the proceedings.

### REASONS

1. this case was listed before me for a preliminary hearing on the question of which of the respondents is the employer of the claimant. It was listed to start at 10 o'clock. The respondents 0 did not attend at 10 o'clock so I caused enquiries to be made. My clerk, as a last resort obtained a telephone number for the first respondent and attempted to make contact with them. I had adjourned the hearing from 10.07 until 10.20 for final enquiries to be made. My clerk having made contact with somebody at the Rutherglen Cafe had asked for contact with one of the managers. When she asked for a telephone number on which they could be contacted she was instead given an email address. She attempted to make contact at 10.14 with that email address marking the email of high importance. I extended the adjournment of the case until 10.30 and a further email was sent that indicated that if the respondents had not indicated that they would attend then the hearing would proceed in their absence.

2. At 1032 there had still been no response from the respondents so I invited the claimant to give her evidence and after some discussion to clarify the issues and to ensure that the respondent's

case was considered as it appears on their pleadings, at 1 0.43 the claimant gave a civil affirmation and gave her evidence.

3. She recounted how she saw an email advert for the first respondent's job vacancy. She met with Stephen Jacobs who runs (jointly) the first respondent, and Mr Jacobs explained about the first respondent and its philosophy.

4. She then had a more formal interview at the Eastwood cafe with the two people who run the first respondent. The claimant showed me the offer of employment which she signed and which is plainly with the first respondent.

5. The contract of employment is contained in a letter from the first respondent dated 21 June 2018, which the claimant signed on it seems 28 June 2018. The contract said that the position of head chef was being offered by the respondent first respondent to the claimant with effect from 16 July 2018. The letter gave details of the salary and other benefits.

6. The claimant was asked about the respondent's case in this regard. The respondent in its pleadings raised a case that the claimant did not start on 16 July 2018. The claimant agrees with that to a certain limited extent. She says that the first day of her employment was 17 July 2018. However she rejected the proposition that the first date of her employment was 21 July 2020 (which must be a typographical error for 2018, but is how it appears in the respondent's pleading).

7. The claimant said that originally the respondent had wanted her to start work on the 16th and she had explained, during the interview, that she could not because she had made arrangements in relation to her brother's birthday. She arranged to start on 17 July when she would be back in Glasgow. Her brother lives approximately one hour outside of Glasgow where he runs a hotel. I accept the claimant's evidence that she did not say that she could not start until 21st and I accept that she did start on 17 July. In any event the contractual agreement was that she was employed from 16 July 2018.

8. I accept the claimant's evidence that Greenhouse Services (second respondent) was never mentioned at the interview.

9. I accept that there was no mention of the first respondent forming a new company. The claimant could recall that the owners of the first respondent said that they were expanding the first respondent.

10. The only indication that the claimant was ever employed by the second respondent is that his name appears on the claimant's payslips. I do not accept that this indicates in any way there was ever an offer (as the respondent claims in its pleadings there was) made to the claimant by the second respondent which she accepted. There is simply no evidence that any such offer was made or that it was accepted.

11. The respondents also rely on the fact that the claimant used the human resources portal and claim that the main terms and conditions from the second respondent were issued by that portal to the claimant. The claimant denied this and I accept that evidence. Despite claiming in the pleadings that there was evidence of such terms and conditions the respondent simply never produced any of it. I accept that the claimant has in fact asked since her dismissal for documents from that portal. I accept that documents were not sent to the claimant's personal email address and in particular payslips were not sent to her personal email address and I accept that she lost access to any such documentation that may have existed on the human resources portal at latest at the point at which she was dismissed.

12. The claimant accepts that she noted that the second respondent's name was on the payslips but told me and I accept her evidence that it is not uncommon to have a payment company dealing with the payslips in the catering industry. Her experience is that regardless of who you were nominally working for you may get payslips from some service company.

13. The claimant was taken to the second respondent's pension scheme document and said very frankly that she did not think about the significance of that at the time. In any event it makes no

difference to the question of whether she was employed by the first respondent or second respondent. There was never any offer from the second respondent. I also asked the claimant about the allegation made by the respondent that the claimant must have realised who she was working for because she was engaged with the second respondent's suppliers. The claimant said that the suppliers always use the same accounts. It did not make any difference who the supplier was supplying to it was the same supplier for all the accounts. I readily accept that there was nothing in that situation to put anyone on notice that it might ultimately be suggested that the second respondent was the claimant's employer. Indeed the suggestion appears to have no foundation whatsoever.

14. I therefore found that the first respondent was the employer of the claimant. I dismissed the second respondent from the proceedings.

**Employment Judge: Declan O'Dempsey**  
**Date of Judgment: 02 August 2021**  
**Entered in register: 05 August 2021**  
**and copied to parties**

## EMPLOYMENT TRIBUNALS (SCOTLAND)

**Case Number:** 4107270/2020

**Claimant:** R Martin

**Respondent:** The Greenhouse Community CIC

# ORDER TO PAY A DEPOSIT

## Employment Tribunals Rules of Procedure 2013

At a preliminary hearing held at Glasgow by CVP on 2 August 2021 Employment Judge O'Dempsey made the following Order:

The Employment Judge considers that the following argument has little reasonable prospect of success:

That the claimant is not entitled to a redundancy payment.

The reasons why the Employment Judge has reached this conclusion are as follows:

The respondent's response does not advance a proper basis for why the claimant is not entitled to a redundancy payment in the sum claimed and the claimant was plainly redundant on the documents sent by the respondent. Having the requisite two years of service and having been expressly made redundant by the respondent she is (regardless of whether she may claim unfair dismissal) entitled to a redundancy payment from the first respondent.

Under Rule 39 of the Employment Tribunals Rules of Procedure, the Employment Judge orders that the claimant is to pay a deposit of £500 (five hundred pounds) by not later than 23 August 2021 . This is as a condition of being allowed to continue to advance that argument.

If the Tribunal at any stage decides the specific allegation or argument against the paying party for substantially the reasons given above, this may result in an award of expenses or preparation time made against the paying party and the deposit will be paid to the other party.

Employment Judge O'Dempsey

Date: 2 August 2021

### **Note:**

**(1) Unless the deposit is paid within the time limit, the allegation or argument to which this order relates, will be struck out.**

(2) You may apply to have this order varied, suspended or set aside. You must confirm when making such an application that you have copied it to the other party(ies) and notified them that any objections to your application should be provided to the Tribunal as soon as possible

## **NOTES ON DEPOSIT ORDER**

Please read these notes carefully. There are time limits for payment and these are set out in paragraph 5 below.

1 . The order of the Tribunal is set out in the attached documents. These notes are for guidance only and are not a comprehensive statement of the law. They are intended to assist you in payment of the required deposit.

### **Payment**

#### **CHEQUES OR POSTAL ORDERS MUST BE MADE PAYABLE TO THE TRIBUNALS SERVICE.**

2. If you wish to proceed to a full tribunal hearing, payment of the deposit by cheque or postal order should be sent with the tear off slip below to:

PHR Administration  
Employment Tribunals Service  
Finance and Resources Directorate  
Spur J Block 2,  
Government Buildings  
Flowers Hill  
Bristol  
BS4 5LA

NB Payment by cash is made at your own risk and should be sent by recorded delivery. The Tribunals cannot be held responsible for cash lost in the post. Proof of postage is no guarantee of delivery.

3. An acknowledgement will not be issued unless requested.

1. If the case goes ahead and the party against whom the order is made persists in participating in proceedings relating to the matter to which the order relates, they may have an award of costs made against them and could lose their deposit.

### **Timescale**

5. Payment must be made within 21 days of the date on which the attached order was sent to you. If payment is made by cheque, the cheque must be received in sufficient time to allow it to be cleared within the period allowed for payment.

### **MonPayment**

5. Unless the deposit is paid within the time limit, the claim or the response or part of either to which the order relates, will be struck out.

## **Withdrawal**

7. If it is decided not to proceed with the claim, written notification should be sent to the Office Manager of the Office of the Employment Tribunals dealing with your case.

## **Enquiries**

8. Enquiries relating to the case should be referred to the address at the head of these notes.

Enquiries regarding receipt and repayment of your deposit should be referred to: Finance and Resources Directorate, Bristol (Tel: 0117 916 5019)

## **DEPOSIT ORDER**

To: PHR Administration  
HMCTS (Employment Tribunals Service)  
Finance and Resources Directorate  
Spur J Block 2,  
Government Buildings  
Flowers Hill  
Bristol  
BS4 5LA

Case Number ....

Name of Claimant/Respondent\*

Please find attached cheque/postal order\* for £

(Please also write your case reference number on the back of the cheque or postal order).

\*Please delete as appropriate.

**CHEQUES OR POSTAL ORDERS MUST BE MADE PAYABLE TO HMCTS**