



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100594/2020**

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**Held in Glasgow on 15 May 2020  
(Final Hearing by telephone conference call)**

**Employment Judge: Ian McPherson**

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**Mrs Penny Eaton**

**Claimant  
In Person**

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**The Parlour Stenhousemuir Limited**

**Respondents  
Not present and  
Not represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that: -

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- (1) Having heard the claimant in person at this Preliminary Hearing, and the respondents, having lodged an ET3 response defending the claim, not having appeared nor been represented, despite being issued with Notice of Final Hearing issued on 3 February 2020, the Tribunal, in terms of **Rule 48 of the Employment Tribunals Rules of Procedure 2013**, converted the Preliminary Hearing into a Final Hearing, being satisfied that neither party would be materially prejudiced by the change, the Tribunal having decided, in terms of **Rule 47**, after having considered the information available to it, that it was appropriate to proceed with the listed Hearing in the absence of the respondents who had failed to attend or be represented, but taking into account the terms of the ET3 response previously lodged on their behalf by their representative.

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**E.T. Z4 (WR)**

(2) In those circumstances, having heard further from the claimant, and having considered the information and documents provided by her, and her comments on the ET3 response, the Tribunal delivered an oral judgment in favour of the claimant, finding that, on the basis of the information and material available to the Tribunal, her complaint of the respondents' failure to pay her holiday pay is well-founded and her claim succeeds, and the Tribunal **ordered** that the respondents, having failed to pay the claimant's holiday entitlement in respect of annual leave accrued but untaken, they are ordered to pay the claimant the sum of **NINE HUNDRED AND TWENTY ONE POUNDS, TWENTY EIGHT PENCE** (£921.28).

(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 any pending application for strike-off from the Register of Companies, company number **SC593422**, and for the Registrar to consider suspending any strike-off application pending the respondents paying the claimant the sum ordered in this Judgment.

## REASONS

### Introduction

1. This case called before me at 2.00pm on the afternoon of Friday, 15 May 2020, as per Notice of Final Hearing issued to both parties by the Tribunal by letter dated 3 February 2020 assigning a one-hour Final Hearing before an Employment Judge sitting alone for full disposal of the case, including remedy, if appropriate.

2. On account of the ongoing Covid-19 pandemic, and joint Presidential Guidance issued by the Presidents of Employment Tribunals in Scotland, and England & Wales, in March 2020, the Final Hearing had been converted by the Tribunal into a telephone conference call Case Management Preliminary

Hearing, on account of there currently being no in person Hearings conducted, and both parties notified accordingly.

**Claim and Response**

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3. On 29 January 2020, following ACAS early conciliation between 24 December 2019 and 8 January 2020, the claimant, then acting through Russell & Aitken, solicitors, Falkirk, submitted an ET1 claim form against the respondents, in respect of a complaint of failure to pay holiday pay, said to be amounting in total to **£935.94** to date of termination of employment on 21 November 2019, arising from termination of her employment with them as a café worker / barista, since 10 December 2018.

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4. Thereafter, by Notice of Claim and Notice of Final Hearing dated 3 February 2020, copy of the ET1 claim was served on the respondents at the address for service provided in the ET1 claim form. The respondents were advised that their ET3 response should be submitted to the Glasgow Tribunal Office within 28 days at latest. Along with that Notice of Claim, the respondents were given Notice of the Final Hearing arranged for 2.00pm on Friday, 15 May 2020, with one -hour allocated as per standard practice.

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5. On 2 March 2020, an ET3 response was lodged on behalf of the respondents defending the claim. While the respondents' contact was stated as Mr Graeme Clark, the ET3 response was lodged on the respondents' behalf by a David Hastings, senior accountancy partner, at Taylor Morgan, accountants and business advisers, Alloa. It was stated that the company was in the process of being put into liquidation and it had no means to pay any outstanding liabilities.

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**Hearing before this Tribunal**

6. When the case called before me, on Friday, 15 May 2020, at 2.00pm, the claimant was in attendance, at the telephone, unrepresented, and

unaccompanied. She had submitted various documents to the Tribunal by email sent on 15 May 2020 @ 11.35am, although it did not appear to have been copied to the respondents, as it properly should have been under **Rule 92**. The claimant explained that she was now representing herself in this matter, and that she had heard nothing from the respondents, nor from anybody on their behalf. She was ready and willing to proceed with her case there and then at this Hearing. She stated that she did not seek a postponement, to allow the respondents an opportunity to attend at a later date, and she did not want the case relisted, but to proceed that day.

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7. There was no appearance by, or representation, for the respondents, and as they had lodged an ET3 response defending the claim, I made appropriate enquiries. The Tribunal clerk advised me that, the day before, the listing section had tried to contact the respondents, but without success. There was no correspondence from them, after receipt of the ET3 response lodged by Mr Hastings.

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8. In these circumstances, I explained to the claimant, as an unrepresented, party litigant, that I had to decide how to proceed, and whether to proceed in the absence of the respondents, always bearing in mind the Tribunal's overriding objective, in terms of **Rule 2**, to deal with cases fairly and justly, including avoiding delay, and saving expense.

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9. Having heard from the claimant, I decided to proceed in the absence of the respondents, having considered the information available, as per **Rule 47**, and so, in terms of **Rule 48**, I converted this Preliminary Hearing (itself converted from the listed Final Hearing, into a telephone conference call, solely on account of Covid-19 pandemic and Presidential Guidance) back into a Final Hearing to allow me to dispose of the case at this Hearing, and without the need to postpone / adjourn, and relist to another date.

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10. In coming to that procedural decision about appropriate next steps, I had regard to the fact that the claimant was present, ready and willing to proceed,

and that the respondents had failed to appear, or be represented, and no application had been made by them, or on their behalf, to postpone and relist the listed Final Hearing. I was readily satisfied that they must have been aware of this Hearing date and time as it was set forth in the Notice of Claim served upon them on 3 February 2020, to which they had responded by lodging an ET3 response defending the claim on 2 March 2020. Further, while they had defended the claim, the terms of the ET3 response lodged by them did not dispute liability to the claimant for the sums that she sought, but, in terms, stated that the company was in the process of being put into liquidation and it had no means to pay any outstanding liabilities.

11. From the information provided by the claimant, in her email of 15 May 2020, it was clear, from the Companies House web search that she had conducted, and produced to the Tribunal, that the respondents are shown as an active company, with no information about any pending application to strike it off the Companies Register, and no information about any insolvency proceedings related to the respondents.

12. The information provided by the claimant did show, from the public record, that the respondents' Mr Graeme Clark had resigned as a director on 14 March 2020, but the company itself remains in existence. I had noted, in my pre-read of the Tribunal's casefile, that on Initial Consideration of the claim and response, on 6 March 2020, Employment Judge Robert Gall, in directing that the case proceed to the listed Final Hearing on 15 May 2020, as previously listed on 3 February 2020, had instructed the clerk to the Tribunal to write to Companies House, Edinburgh.

13. A letter from the Tribunal was sent, on 6 March 2020, advising Companies House that the Tribunal understood (from the ET3) that there was a proposal to strike-off or dissolve the company, and Judge Gall had asked the clerk to advise the Registrar that there are ongoing proceedings in the Employment Tribunal regarding this company. The claimant advised me, at this Hearing, that she has received no payment for holiday pay from the respondents and,

as such, she remains a creditor to the respondents who have failed to pay her what she is owed.

**Discussion and Deliberation**

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14. Having decided to proceed with this Hearing, in the absence of the respondents, I then heard further from the claimant, and discussed with her the terms of her ET1 claim form, the respondents' ET3 response, and the various documents which she had submitted to the Tribunal, on 15 May 2020, which I had pre-read in advance of the start of this Hearing.

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15. These comprised a completed claimant's PH agenda, together with a written statement by the claimant and another by her husband, Daniel Eaton, and indicated that she wished to lead other witnesses, namely James Brown, and Lucie Arneil, to state that they too are owed holiday money as well as her by the respondents. I advised her that the Tribunal would not seek to hear evidence from other ex-employees in a similar situation, as what was before me was her claim against the respondents, and only that claim. She also enclosed written questions she wished to ask her witnesses, and Mr Clark for the respondents, and copy two payslips from the respondents, and copy papers downloaded from Companies House with an overview of the company, showing it as still active, and termination of Mr Clark's directorship on 14 March 2020.

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16. As the material facts were not in dispute, given the respondents' ET3 response had accepted the claimant's stated dates of employment, from 10 December 2018 to 21 November 2019, that she was employed for 21.5 hours per week, for gross £175.26 per week before tax, and £172.33 net weekly take home pay, I asked the claimant why the PH agenda form she had submitted to the Tribunal was showing that she sought financial compensation against the respondents for **£920**, whereas her ET1 claim form (at section 9.2) had sought a slightly higher figure at **£935.94**, being £8.21 x 37 hours = **£303.77** for 2018/19, and £8.21 x 77 hours = **£632.17** for 2019/20.

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17. In reply, the claimant stated that she had used the same hourly rate in both calculations, with rounded down hours, when her payslips, which she had now produced to the Tribunal, as part of her documents submitted on 15 May 2020, showed different amounts owing, namely 37.05 hours annual leave remaining w/e 31 March 2019, @ £7.83 per hour, and 76.88 hours annual leave remaining w/e 27 October 2019, @ £8.21 per hour. In writing up this Judgment, I have calculated those amounts as **£290.10**, and **£631.18**, totalling **£921.28**, rather than the rounded down total figure of **£920** stated by the claimant in her completed PH agenda.

18. While the claimant did not have access, at this telephone conference call Hearing, to a copy of the ET3 response, as it had been sent to her former solicitor, Catriona MacIntyre, at Russell & Aitken, the claimant confirmed that she was aware of its terms, as her solicitor had discussed them with her in March 2020, but to refresh her memory, and ask for her comments on its specific terms, I took the opportunity to read to her the full terms of the stated defence, at section 6.1 of the ET3 response, reading as follows:

***“Mrs Eaton did not use any of her accrued holiday entitlement by 5th April 2019 (2018/19 Tax Year) and it was therefore deemed as lost for that year. During this period Mrs Eaton only requested the odd day off for family matters but it was at very short notice (less than 24 hours) and the rotors for the week had already been completed. All efforts was used to change the rotor/get last minute cover for Mrs Eaton however to no avail and therefore her request for holiday was rejected.***

***During 6th April 2019 to 21st November 2019 the only Holiday requests from Mrs Eaton was for the odd day off here and there due to family matters again, like the previous year all her requests was made at very short notice. every action was taken to try and accommodate Mrs Eaton's request however no cover could be found at that very short notice and therefore it was sadly rejected.***

5 *Mrs Eaton never put in a holiday request in advance during her employment. I agree that Mrs Eaton had accrued holiday pay at the date of her termination however the business continued trading until the final last day the staff was employed. I personally was financially supporting the business for the last 2~3 months of it trading however with the increase in debts and having no more personal money to put into it the shop was closed permanently.*

10 *The company which ran the shop and employed Mrs Eaton (The Parlour Stenhousemuir Ltd) is currently in the process of being struck off/terminated. It holds no assets but has a list of outstanding debts owed to various suppliers and HMRC. I have sent a letter to HM Revenue and Customs to advise them of this and to invite them to start the proceedings to put this into liquidation.*

15 *The company has no money/assets and as the director I have tried my hardest to keep the business afloat - even using my own personal funds. The company is in the process of being put into liquidation and has no means to pay any outstanding liabilities.”*

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19. In commenting on that stated defence for the respondents, the claimant advised me that it was not agreed, and that she had produced the respondents' payslips given to her showing what was her unpaid holiday entitlement. That total sum remained unpaid, and she was seeking a judgment against the respondents for that reason.

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20. She confirmed that her position was as set forth in section 8.2 of her ET1 claim form, namely that she had 37 and 77 hours holiday saved up until the end of March 2019, and to before her employment ended, and whenever she asked for time off, she was told that she was not entitled to any holidays, or there was no staff to cover for her, and before her employment ended, she was told that whatever holidays she had she was to keep for Christmas time

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2019, but the shop then stopped trading in November 2019, when her employment with the respondents ended.

5 21. As the claimant only was present at this Hearing, I had no opportunity to hear from the respondents, but I did put to her their stated grounds of resistance to her claim. She disputed their account, and insisted that she had been refused holidays, and not paid the amount due to her as accrued, but untaken holiday entitlement.

10 22. Her statements to me were consistent with what was in her ET1 claim form, and the sums sought vouched by payslips provided to her by the respondents, as produced by her to this Tribunal. In these circumstances, I was satisfied that she had proven her case, and accordingly I delivered oral judgment to that effect, advising her that a written Judgment and Reasons  
15 would follow, detailing my discussion and deliberation on her case.

23. In closing the Hearing, at just after 2.25pm, I advised the claimant that a copy of the Judgment would be sent to her and to the respondents too, and they would have a period of 14 days to apply for a reconsideration, if they felt the  
20 Tribunal should be invited to reconsider this judgment on the basis that the interests of justice made that necessary.

24. I explained to her that as the respondents were not in attendance, nor represented at this Hearing, despite having lodged an ET3 response  
25 defending it, it is possible they might seek a reconsideration, which is open to any party under **Rule 70**. At this Hearing, I considered the terms of the respondents' response form (ET3). In the absence of a representative, and no communication from them, or anyone on her behalf, to the Tribunal Office, there was no motion by, or on the respondents' behalf, for a postponement  
30 to a later date, and there were no written representations from them.

25. On account of the respondents' failure, without any proper explanation, to appear or be represented at this Hearing, I inferred that the respondents no

longer insisted in their defence to this claim, and that they had abandoned it. Their stated defence did not challenge the legal basis of her claim, but sought to state that the company was in the process of being put into liquidation and it had no means to pay any outstanding liabilities. What is clear, as at the  
5 date of this Hearing, is that the respondent company remains in existence, and it has not been struck-off or dissolved.

26. It is equally clear that Mr Graeme Clarke is no longer a director. That may, or may not, explain why the respondents were not represented at this Hearing  
10 by the company's accountants, at Taylor Morgan, who lodged the ET3 response. I would observe that this *laissez faire* approach by the respondents is not, in my view, consistent with a respondent employer diligently attending to defend a claim against them as presented to the Employment Tribunal. Their failure to appear, or be represented at this  
15 Hearing, is a clear indicator that they are not actively pursuing their defence to this claim.

27. While the Employment Tribunal process is informal, it is nonetheless a judicial  
20 process. Parties should, in respect of proceedings raised before the Tribunal, either attend, or be represented, or if the matter is to be abandoned or withdrawn, whether on account of a settlement reached between the parties, or otherwise, take proactive steps to advise the Tribunal and other party of their position, at the earliest possible opportunity.

25 28. In such circumstances, the claim can be dismissed, or withdrawn, as circumstances may require, and the Tribunal's diary re-arranged, if time permits, to allow for other cases requiring judicial attention to be heard, and unnecessary previously scheduled Hearings cancelled. By the respondents failing to communicate in advance with the Tribunal office, the Tribunal  
30 system has quite understandably proceeded on the basis that the Hearing allocated to this claim would proceed.

29. In the event, by the respondents' failure to attend or be represented, these proceedings were concluded within half an hour, when one full hour had been

set aside, as previously advised to both parties when the Notice of Final Hearing was issued.

**Intimation to Registrar of Companies, Edinburgh**

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30. In writing up this Judgment, given the Tribunal's previous letter of 6 March 2020, I have instructed the clerk to the Tribunal to send a copy of this Judgment to Companies House for information, and consideration by the Registrar in respect of the any pending application by the respondents for strike-off from the Register of Companies.

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Employment Judge: Ian McPherson

Date of Judgment: 18 May 2020

15 Entered in register: 28 May 2020  
and copied to parties