

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102298/2017

Held in Glasgow on 20 October 2017

5 Employment Judge: Ian McPherson

Mr Grant Legg
10 Claimant
Represented by:-
Gavin Legg -
Claimant's brother

15 DFS Caskets Ltd
Respondent
Represented by:-
Martin Smith -
Managing Director

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

(1) Having heard parties' representatives at the assigned Final Hearing on 20 October 2017, and the Tribunal having been advised that the parties have agreed terms of settlement, this Final Hearing is postponed and the
25 proceedings sisted for 7 days in order to allow the parties to perfect their agreement and give effect to the agreed terms, by allowing the respondents' cheque in settlement, tendered at this Hearing, being lodged forthwith by the claimant and awaiting cleared funds from the respondents into the claimant's bank account.

30 (2) Of consent of both parties, and in terms of Rule 64 of the Employment Tribunals Rules of Procedure 2013, it is noted and recorded that parties' representatives agreed in writing at this Final Hearing that, the respondents having tendered a cheque payable to the claimant in the sum of THREE

HUNDRED AND SEVENTY FIVE POUNDS (£375.00), that sum is in full and final settlement of the claim, and payment to be received within 7 days. It is ordered by the Tribunal that it is for the claimant to account to HMRC for the agreed payment which is to be made by the respondents gross, without deductions for any income tax and NI that might be due.

- (3) The parties are at liberty until 4.00 p.m. on Friday, 27 October 2017 to apply to the Tribunal to have the sist recalled and to have the matter restored to the list, if settlement is not perfected in terms of their joint written agreement. If settlement is perfected, the claimant's representative shall, without delay, advise the Tribunal, and confirm withdrawal of the claim under RuleJ51.

REASONS

1. This case called before me as an Employment Judge sitting alone for Final Hearing before the Tribunal today, as per Notice of Final Hearing issued to both parties on 9 August 2017, when the ET1 claim form seeking compensation for unlawful deduction from wages in the sum of £320 was served on the respondents. The respondents lodged an ET3 response on 28 August 2017, defending the claim.
2. On 17 October 2017, the respondents' representative, then David Smith, sought a postponement of this Final Hearing. That was opposed by the claimant's representative, Gavin Legg, on 18 October 2017, and on 19 October 2017, I refused the respondents' postponement application, and ordered that the case proceed to the listed one day Final Hearing assigned for today.
3. While the respondents' application of 17 October 2017 had referred to them wishing to defend their position and prove the claimant was in fact in breach of contract himself, the Tribunal's reply on 19 October 2017, issued on my instructions, indicated that, as per Employment Judge Gall's directions on 1

September 2017, at Initial Consideration of the claim and response, he had noted that there was no employer contract claim lodged providing a basis for any counter-claim or offset.

4. Later on 19 October 2017, there was an email exchange between parties' representatives, and the Tribunal, after David Smith emailed stating that the respondents were willing to pay the claimant the sum of £320 claimed in his ET1, and he proposed payment by recorded delivery post as proof of payment. Gavin Legg replied, on the claimant's behalf, stating that there would need to be an agreement in place before the Final Hearing could be vacated.
5. When that correspondence of 19 October 2017 was referred to me, the Tribunal replied, on my instructions, directing that if settlement could not be perfected through ACAS, both parties should attend at this Hearing, and address me on further procedure including, if appropriate, a Consent Judgment being issued by the Tribunal under Rule 64 of the Employment Tribunals Rules of Procedure 2013.
6. At the commencement of the Final Hearing this morning, around 10:08am, the claimant was in attendance, represented by his brother Gavin. The respondents were represented by Martin Smith, their managing director, who advised me that he is the son of David Smith who had to date been acting as the respondents' representative. By email sent to the Tribunal, at 07:16 am this morning, Martin Smith had advised that his father was no longer able to attend, on account of his partner feeling unwell, and that he would be representing the respondents at this Hearing.
7. I enquired of both parties' representatives about whether or not the claim was being settled, or going to proof at Final Hearing. After some preliminary discussion, when the claimant's brother advised that the respondents had recently raised a Small Claims action against the claimant, at Dumfries Sheriff Court, and the respondents' representative confirmed that there were

indeed those civil legal proceedings now instituted, I clarified, at the request of both parties' representatives, that I could only deal with the claim before this Tribunal, and any procedure in the Small Claims action was a matter for parties and the Sheriff at Dumfries.

5 8. Further, I adjourned this Hearing, to allow both parties* representatives to have informal discussions, and see if it would be possible for them to agree the terms of a Consent Judgment under Rule 64. I made it plain to both of them that I am an independent and objective Judge, assigned to hear the case, and that I could not advise either party on what course of action to
10 take, or not, but it was appropriate, in light of their enquiry about the Tribunal's procedures, to signpost them both to the relevant Tribunal Rules, being Rule 64 (Consent orders and judgments), as also Rules 51 (End of claim) and 52 (Dismissal following withdrawal).

15 9. When adjourning at 10:21am, and on my direction, the clerk to the Tribunal provided parties' representatives with my bench copy of **Butterworths Employment Law Handbook**, where I had left it open at the relevant page for them to see Rules 51 and 52.

20 10. While a 1/2 hour adjournment was felt appropriate, it was in fact almost 3/4 hour before the public Hearing resumed at 11:04, when I was presented with a written agreement signed by both parties' representatives, stating **(1) full & final settlement of the claim in the sum of £375, and (2) payment to be received within 7 days**. The original signed written agreement was placed on the casefile, and a photocopy provided to each party's representative by the Tribunal clerk.

25 11. Both parties' representatives advised me, in the presence of the Tribunal clerk, that they wished me to issue a Consent Judgment in those terms under Rule 64. I was advised that the agreed sum was £375, to include the sum sued for at £320, plus £55 for interest, and outlays, including the claimant's travelling expenses to this Hearing. The claimant's

representative stated that he wished this Hearing postponed, for the Tribunal to issue a Consent Judgment, and if settlement was not perfected within 7 days, liberty to re-apply to the Tribunal to have the case re-listed for Final Hearing.

- 5 12. In reply, the respondents' representative stated that he wanted the Final Hearing to end, and matters to be fully concluded, and he queried whether the sum was gross, or net. In my Judgment, I have ordered that it is for the claimant to account to HMRC for the agreed payment which is to be made gross, without deductions for income tax and NL
- 10 13. I noted that the written agreement provided to the Tribunal did not address Rules 51 or 52. The claimant's representative stated he could not withdraw the claim, as yet, as the agreed payment had not been received the claimant.
- 15 14. The respondents' representative then presented a cheque payable to the claimant, in the agreed amount of £375, so that the claimant can lodge it forthwith at the bank today, it being a Friday, and it taking 4 days' for cheques to clear, and await cleared funds from the respondents into his bank account.
- 20 15. As regards the Small Claims action, I stated again that that was a matter for parties to take their own professional advice upon, and not a matter for me.
- 25 16. The respondents' representative having tendered the cheque, and the claimant's representative being cautious about the claimant not yet being in receipt of cleared funds from the respondents, I stated that parties are at liberty until 4.00 p.m. on Friday, 27 October 2017 to apply to the Tribunal to have the sist recalled and to have the matter restored to the list, if settlement is not perfected in terms of their joint written agreement.

17. If settlement is perfected, the claimant's representative shall, without delay, advise the Tribunal, and confirm withdrawal of the claim under Rule 51.

18. On that basis, I concluded proceedings at 11:16 am, thanking parties for their attendance and contribution, and stating that I would proceed forthwith to draft Judgment and Reasons for early issue. This I have now done.

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Employment Judge: Ian McPherson
Date of Judgment: 20 October 2017
Entered in register: 23 October 2017
and copied to parties

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