



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

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Judgment of the Employment Tribunal in Case No: 4105369/2022 Issued  
Following Open Preliminary Hearing Held at Edinburgh via the Cloud Based  
Video Platform on 5<sup>th</sup> December 2022 at 10.15 am

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Employment Judge J G d'Inverno (sitting alone)

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Mr G Mckinlay

Claimant

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Alex Morrison

1<sup>st</sup> Named Respondent  
Represented by:  
Messrs Morton Fraser LLP

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David Arthur

2<sup>nd</sup> Named Respondent  
Represented by:  
Messrs Morton Fraser LLP

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Ross Grey

3<sup>rd</sup> Named Respondent  
Represented by:  
Messrs Morton Fraser LLP

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Bryan Murray

4<sup>th</sup> Named Respondent  
Represented by:  
Messrs Morton Fraser LLP

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Darren Hush

5<sup>th</sup> Named Respondent  
Represented by:  
Messrs Morton Fraser LLP

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

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(First) That the claimant lacks Title to Present and the Tribunal lacks Jurisdiction to Consider his complaint of Unfair Dismissal insofar as directed against each of the 1<sup>st</sup> to 5<sup>th</sup> named respondents inclusive; and,

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(Second) The claimant's Claim Number 4105369/2022 is dismissed for want of Jurisdiction.

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**Employment Judge: J G d'Inverno**  
**Date of Judgment: 06 December 2022**  
**Entered in register: 08 December 2022**  
**and copied to parties**

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I confirm that this is my Judgment in the case of Mckinlay v Alex. Morrison & Others and that I have signed the Judgment by electronic signature.

**REASONS**

1. This case called for Open Preliminary Hearing, fixed at the instance of the Tribunal, for consideration of whether the claimant possessed Title to Present  
5 and the Tribunal Jurisdiction to Consider, his complaint of Unfair Dismissal insofar as directed against the 1<sup>st</sup> to 5<sup>th</sup> named respondents inclusive.
2. The claimant's complaint of Unfair Dismissal embodied in Claim Number  
10 4105369/2022 was first presented to the Employment Tribunal on the 2<sup>nd</sup> of October 2022.
3. By correspondence dated 7<sup>th</sup> November the Tribunal required the claimant to  
submit written information setting out the basis upon which he sought to  
pursue a claim of Unfair Dismissal in the Employment Tribunal against the  
15 5 named individuals against whom it was directed, it appearing, on the face of the Claim Form, that none of the individuals had ever been the claimant's employer.
4. By email dated 7<sup>th</sup> November the claimant responded. The response given  
20 by him, in his correspondence of 7<sup>th</sup> November, did not set out a basis in law upon which he would have Title to so direct his claims, or the Tribunal Jurisdiction to Consider them.
5. By Strike Out warning dated 9<sup>th</sup> November 2022, Employment Judge  
25 Whitcombe directed the claimant to show cause, by the 23<sup>rd</sup> November 2022 as to why his complaint of Unfair Dismissal, as so directed, should not be struck out in terms of Rule 37(1 Xa) of the Rules of Procedure (as enjoying no reasonable prospect of success), by reason firstly of it being directed against  
30 individuals who had not been his employer and secondly, by reason of the events given notice of as relied upon by the claimant having occurred some 4 years prior to the date of first presentation, or alternatively seeking the fixing of a Hearing to enable the claimant to put forward his reasons, if any, in person.

- 5 6. By email dated 10<sup>th</sup> November 2022 the claimant responded reiterating, in summary, the reasons already given by him on 7<sup>th</sup> November. The claimant's response of 10<sup>th</sup> November again failed to set out any basis in law upon which his claims could be competently directed against the named respondents.
- io 7. By Order dated 11<sup>th</sup> November 2022, Judge O'Donnell, directed that the case be appointed to a one hour Open Preliminary Hearing to proceed by Video Conference, for determination of the Preliminary Issue of Strike Out (want of Jurisdiction), in order to provide the claimant with the opportunity of explaining his reasons, and making his representations, orally.
- 15 8. At the Open Preliminary Hearing the claimant, Mr Mckinlay, participated in person and on his own behalf. There was no appearance by or on behalf of the respondents.
- 20 9. Mr Mckinlay addressed the Tribunal orally. In light of his appearing as a litigant in person the Tribunal has sought to record and set out fully below the submissions made by him as follows:-

25 “The reason the claims should go ahead is that these men ruined my career in Royal Mail. They used social media. I lost 23 years of pension due to this affecting myself. I am now fighting bowel cancer. It affected my health. It is disgusting to me that they did it. I have no problems with Royal Mail. My problem is with these men because they told lies about me. And described me to other people as *'doing a Mckinlay to you'*. I don't want my job back. I am on a zero hours contract and only work when required to work. Because of my bowel cancer not working very' much. I want you to decide that I should get my pension back. They did not employ me but they effectively lost me my career. I am now struggling to live because of what they did. They knew I had a mental breakdown in 2016 and they used that against me just because they did not like me. I lost everything due to these men making lies up about me. I want justice and what I am entitled to and justice for the men involved.”

### Discussion and Determination

- 5 10. The complaint presented in Claim Number 4105369/2022 is a complaint of Unfair Dismissal which bears to proceed in terms of section 98 of the Employment Rights Act 1996. The claim is directed against 5 named individuals who were previously fellow employees of the claimant. None of the named respondents was ever the claimants employer.
- 10 11. While each of that type of claim is a competent claim in terms of Scots law, the vehicle by which the claimant seeks to make such recovery is that of a complaint of Unfair Dismissal raised in the Employment Tribunal.
- 15 12. In his Written Particulars of Claim, his correspondence to the Tribunal in response to a request for more information and, in his oral submissions made at Open Preliminary Hearing on the 5<sup>th</sup> of December, the claimant describes what appears to be in part a claim for the recovery of damages for personal injury and in part for breach of contract. The claim presented, within which the claimant seeks to make such recovery is a complaint of Unfair Dismissal in terms of Part 2 of the Employment Rights Act 1996.
- 20 13. Unlike the Court of Session or the Sheriff Court, the Employment Tribunal is not a Court of Common Law. That is to say, it does not enjoy a largely universal jurisdiction enabling it to consider all types of claim brought before it. Rather, the Employment Tribunal is a Statutory Court possessing only such jurisdiction as has been given to it by Parliament. Likewise Parliament has conferred the right to complain of the statutory delict of Unfair Dismissal upon persons who are or were employees in terms of section 230 of the Employment Rights Act 1996, and the Title to direct such complaint only against a former employer. The Employment Tribunal has no jurisdiction to consider freestanding complaints of claims for damages for personal injury. While the Employment Tribunal does share with the Court of Session and Sheriff Court a limited contractual jurisdiction, that jurisdiction can be
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awakened only upon termination of a Contract of Employment and thus is restricted to claims directed against a claimant's former employer.

- 5 14. Whatever may be said in respect of the claimant's Title and interest to direct claims for damages for personal injury and or for breach of contract against the 5 named respondents in other courts, that is to say in the Sheriff Court or Court of Session, upon the facts which the claimant offers to prove and taking these facts as proven for the purposes of today's Open Preliminary Hearing, the claimant lacks Title to Direct and the Tribunal lacks Jurisdiction to
- 10 Consider his complaint of Unfair Dismissal insofar as directed against all and any of the 1<sup>st</sup> to 5<sup>th</sup> respondents.
- 15 15. In these circumstances the claimant's claim enjoys no reasonable prospect of success and can neither be presented for want of Title on the part of the claimant nor can they be considered by the Tribunal, for want of Jurisdiction.
- 20 16. The claimant's Claim Number 4105369/2022 is accordingly struck out, variously for want of Jurisdiction and in terms of Rule of Procedure 37(1)(a) as enjoying no reasonable prospect of success.

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