



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Ms M Eaton  
(2) Mr P Slater

**Respondents:** (1) Ditto Payroll (in creditors voluntary liquidation)  
(2) Bright Hospitality Operations Ltd (in creditors voluntary liquidation)  
(3) Ping Hospitality Ltd  
(4) Super Hospitality Group Ltd  
(5) Mohammad Zishan Zaman  
(6) Clarion Collection Cheltenham Regency Hotel  
(7) Clarion Collection Hotel Cheltenham  
(8) Choice Hotels Europe  
(9) Clough North Ltd  
(10) Zaman Hotels (PVT) Ltd (dissolved)  
(11) Cheltenham Regency Hotel

**Heard at:** Bristol

**On:** 10 March 2023

**Before:** Employment Judge Livesey

**Representation:**

Claimants: Ms Hart, counsel

Respondents: Did not attend

## JUDGMENT

First Claimant

1. The Fifth Respondent made unlawful deductions from the First Claimant's wages in the sum of £11,474.23;
2. The First Claimant was unfairly dismissed by the Fifth Respondent and she is entitled to compensation in the sum of £3,436.02, limited to a basic award only.
3. The Fifth Respondent failed to pay the First Claimant's holiday entitlement in the sum of £1,718.01.
4. The First Claimant's complaint of breach of contract relating to notice pay is dismissed.

5. The First Claimant's complaints against the Sixth, Seventh, Eighth, Tenth and Eleventh Respondents are dismissed upon withdrawal and all other claims against all other Respondents are dismissed.

#### Second Claimant

6. The Fifth Respondent failed to pay the Second Claimant a redundancy payment in the sum of £3,150.
7. The Fifth Respondent was in breach of contract in that he failed to pay the Second Claimant's notice pay entitlement in the sum of £1,848.
8. The Fifth Respondent failed to pay the Second Claimant's outstanding holiday pay in the sum of £1,400.
9. The Second Claimant's complaint of unfair dismissal is dismissed upon withdrawal.
10. The Second Claimant's complaints against the Sixth, Seventh, Eighth, Tenth and Eleventh Respondents are dismissed upon withdrawal and all other claims against all other Respondents are dismissed.

## REASONS

### Background

1. All claims arise from the Claimants' work at the Cheltenham Regency Hotel. The Judge was aware of at least 20 other claims which have arisen from the same workplace, although brought against a number of different Respondents.
2. The First Claimant's first claim ('Claim 1') was brought on 23 April 2021 against the first 10 Respondents. It was a claim of unlawful deductions from wages.
3. Only the Fifth Respondent responded, on 21 September 2021, in order to assert that he was not the Claimant's employer. He stated "*I do not employ anyone personally*".
4. On 10 March 2022, the First Claimant brought a second claim ('Claim 2') against the Second, Third, Fourth, Fifth, Sixth, Ninth and Tenth Respondents in which she claimed unfair dismissal, breach of contract relating to notice and unpaid holiday pay. None of the Respondents responded to that claim.
5. The Second Claimant issued proceedings on 27 July 2021 ('Claim 3'). That claim was brought against all Eleven Respondents and was a claim of unfair dismissal, unpaid notice pay, unpaid holiday pay, unlawful deductions from wages and for a redundancy payment. Only the Fifth Respondent filed a response, again to maintain that he did not employ the Claimant personally. He did go a little further in his response than he had in respect of the First Claimant as he maintained that the First Respondent (Ditto Payroll) had been the employer.

6. Claim 3 came before Employment Judge Lambert on 31 March 2022 when the Claimant withdrew his claim against the Tenth Respondent, Zaman Hotels (PVT) Ltd. Other than the Judge requiring the Claimant to provide further evidence in respect of the status of his employers, it does not appear that a great deal else was achieved on this occasion. What did happen after that hearing was that the Second Claimant indicated that he wished to withdraw his claim of unfair dismissal.

### Facts

7. Both Claimants gave evidence and a bundles of documents were produced in respect of both claims (C1 and C2). Pages within the bundle have been referred to in square brackets below and relate to each respective Claimant's hearing bundle. The following facts were found on the balance of probabilities,

#### The First Claimant

8. The First Claimant commenced work as a night porter at the Hotel on 15 August 2007.
9. In 2012, she received a new contract which suggested that her employer was 'Drew Hotels t/a Cheltenham Regency Hotel' but, in 2017, there was a TUPE transfer which purported to be to M Zaman Holdings Ltd (see the letter on the Eleventh Respondent's notepaper [84]). The First Claimant stated that the new manager was the Fifth Respondent (paragraph 3 of her witness statement).
10. The First Claimant was furloughed as a result of the covid-19 lockdown in March 2020. The agreement to furlough her appears to have been at the direction of the Fifth Respondent [93]. She received an email on 1 April from the Fifth Respondent indicating that the government would pay 80% of their wages, with her employer topping up the remaining 20% [94].
11. The First Claimant alleged that she received only a fraction of her wages since that time and no payslips. Each time she approached the Fifth Respondent, she received an assurance that she would be paid.
12. Prior to the lockdown, she had been paid by a number of different entities; initially by the First Respondent, then by the Second Respondent [141-2], then the Ninth Respondent [130-140], until January 2019, and then the First Respondent again until lockdown in March 2020. Thereafter, some of the payments were made by the Third Respondent and latterly, from July 2020, by the Fifth of Respondent until the end of her employment.
13. On 26 January 2021, the First Claimant contacted HMRC to enquire if they had any records of income tax which had been paid for her since March 2020. She explained that she had only received the odd payment and that she had not been dismissed, nor had she received the P45.
14. On 12 April 2021, the First Claimant received an email from the Fifth Respondent indicating that 'we' (whoever 'we' was) had decided to sell the hotel to 'Anoob' who was supposed to have been in touch with her. No

contact was subsequently made and no evidence of any sale or TUPE transfer was ever received.

15. She eventually resigned on 15 February 2022 she had not been contacted by her employer for over a year. She resigned without giving notice [103]. No P45 was provided.
16. After the TUPE transfer in 2017, the First Claimant received no further written or verbal information about any change in her employer although M Zaman Holdings Ltd never appeared on any documentation, payslips or otherwise. Despite her furlough, she understood that the Hotel remained open during lockdown, with the Fifth Respondent receiving money from the local authority to house the homeless.

#### The Second Claimant

17. The Second Claimant commenced work on 29 May 2014 as a Maintenance Man. He too was initially employed by Drew Hotels Ltd.
18. Unlike the First Claimant, however, in 2017, he was not informed that the Hotel was being transferred to M Zaman Holdings Ltd. he understood that his new employer was the Second Respondent.
19. Thereafter, however, the documentation which she received reflected the First Claimant's in so far as it was a changing and rather confusing picture. He was able to produce P60s for the year ending 2019, which showed the Ninth Respondent as his employer [54], and one for the year ending 2020 which suggested that the First Respondent was his employer. His payslips showed that the Second Respondent initially paid him in 2017 and 2018, then the Ninth of Respondent from July 2018, then the First Respondent from May 2019 until the March 2020 lockdown. Whilst in lockdown, he initially received payment from the Fourth Respondent, then the Third Respondent but, like the First Claimant payments were made by the Fifth Respondent from August 2020 until the end of his employment.
20. In April 2021, there was also some reference in messages between him and the Fifth Respondent to Anoob's involvement [78-9]. They were introduced by the Fifth Respondent as he informed the Second Claimant that '*ditto is closed*'. Mr Slater sought clarification and was informed that he had been made redundant [72]. This

#### The Respondents' positions

21. The First and Second Respondents were in creditors voluntary liquidation which did not prevent proceedings continuing against them...
22. The Tenth Respondent had been dissolved in August 2022 and it was accepted that no proceedings could be pursued against it. All claims against it with therefore withdrawn.
23. There were proposals to strike off the Third, Fourth and Ninth Respondents, but they were still showing as active on the Companies House register.

24. The legal status of the Sixth, Seventh, Eighth and Eleventh Respondents was not clear. They had not been identified as corporate entities. They may have been trading names for an individual, partnership or a trading entity, but it was difficult to tell from their name. Ms Hart was not able to clarify the position and she did not seek to pursue claims against them. Those claims were withdrawn also.

### **Conclusions; identity of the Claimants' employer**

25. Of the many claims which had arisen in the South West Region from the Hotel, only a few had actually reached a final hearing. Rule 21 default judgments had been issued in most cases.

26. A final hearing did take place in one case brought by a Mr Bryan against the Fifth Respondent in person (1400110/2020) in which I found that the Fifth Respondent had not been the Claimant's employer personally. Mr Zaman had attended and given evidence and stated that the Hotel building was owned by M Zaman Holdings Ltd which had held a Best Western franchise. He stated that it was a holding company and that the Hotel was leased to the Ninth Respondent which, in turn, outsourced operations to the Second Respondent. The Fifth Respondent himself denied any involvement in any of the companies, whether as a shareholder, employee or director. He stated that he was a self-employed contractor who provided services to M Zaman Holdings Ltd.

27. On further examination of the Companies House records of the Second and Ninth Respondents, contrary to Mr Zaman's assertions in the Bryan case, he had been a Director of both Companies until 2018 (R9) and 2019 (R2).

28. In a further claim brought by Mr Middleton against the First and Second Respondents (No. 1404544/2020), I found as follows;

*"There is an irresistible inference to be drawn from the pattern of conduct which has emerged from his employer; that it has woven a deliberately complex and vague structure in order to hide the position and thus make claims of this sort difficult to bring and pursue."*

On that occasion, judgment was entered against both Respondents on a joint and several basis.

29. It was, of course, important to determine these two claims on the basis of the evidence which was adduced within them. The determinations in other cases might have been informative, but they were not to have been determinative. Nothing that I heard or saw within the evidence in these cases, however, caused me to alter the view that was expressed in the judgment in the Middleton litigation.

30. Ms Hart's submission was that the Fifth Respondent was, on the balance of probabilities, most likely to have been the Claimants' employer at the point that their employments ended. I accepted that submission. There were a number of reasons why that was the case.

31. First, he had been responsible for paying both of the Claimants' salaries in the months prior to the effective dates of termination. The fact that his name

appeared on the bank statements was important, but the evidence revealed more than that; in the Second Claimant's case, he appeared to accept a personal liability to make payment in answer to a grievance which Mr Slater had raised in April 2021 [69].

32. Secondly, he had appeared to have been more than a manager on site, which was how he had been described in 2017 when Drew transferred the undertaking. The First Claimant had dealings with Mr Docherty as a manager. Mr Zaman appeared to give directions to him. The Second Claimant's dismissal was confirmed by him personally too.
33. Thirdly, although a number of other Respondents were used as payroll vehicles, none had ever been introduced as an employer in any formal sense; no contracts were signed or provided, no Employee Handbooks appeared and no clear statement of the position was ever made in writing or otherwise. There was an irresistible inference that the position had been left deliberately vague and unclear to provide better protection to the real employer were there to have been failures to adhere with duties in law, as there clearly were on multiple occasions subsequently.
34. It was relatively clear from the Companies House records that the corporate Respondents were or had ceased trading actively during lockdown. The fact that the Fifth Respondent started paying the Claimants' wages rather suggested that he had personally taken on the work that they had done previously. The First Respondent's name suggested that it was nothing more than a payroll company and the nature of its business was described as that of 'temporary employment agency' on the register.
35. On balance therefore, it was reasonable to conclude, as Ms Hart suggested, that the Fifth Respondent was to have been regarded as the Claimants' effective, de facto employer at the fact that the employments came to an end.

### **Liability and remedy; First Claimant**

36. Having heard the First Claimant give evidence in accordance with her witness statement, I was satisfied that the claims which she had brought were proved, save in relation to the notice pay claim. The Claimant had not given notice and was therefore not entitled to pay for such a period.
37. The First Claimant's losses had been updated in a Schedule which was produced for the hearing. She gave evidence in support of it and the following conclusions were made in respect of her losses;
- |    |                                 |            |
|----|---------------------------------|------------|
| a. | Unlawful deductions from wages; | £11,474.23 |
| b. | Unfair dismissal;               |            |
|    | i. Basic award;                 | £3,436.02  |
|    | ii. Compensatory award;         | Nil        |
| c. | Notice pay;                     | Nil        |
| d. | Holiday pay (21 days);          | £1,718.01  |

**Liability and remedy; Second Claimant**

38. The Second Claimant also proved his claims and that the reason for his dismissal had been redundancy.

39. The Second Claimant's Schedule of Loss was proved in evidence in the Judge was satisfied that the following sums represented as losses;

- |    |                        |              |
|----|------------------------|--------------|
| a. | Redundancy payment;    | £3,150       |
| b. | Notice pay (6 weeks);  | £1,848 (net) |
| c. | Holiday pay (20 days); | £1,400.      |

Employment Judge Livesey  
Date: 10 March 2023

Judgment & Reasons sent to the Parties: 28 March 2023

FOR THE TRIBUNAL OFFICE