



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000032/2023

Held in Glasgow on 3 May 2023

Employment Judge C McManus

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Mr A Fleming

**Claimant
Represented by
Ms McClain -
Law Student**

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Abbey Metal Ltd

**Respondent
Represented by:
Ms M Jenkins -
Solicitor**

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REVOCATION OF ORDER FOR CONTINUATION OF CONTRACT

DECISION

20 The respondent's application for revocation of the Order for Continuation of Contract dated 10 February 2023 is successful and that Order is revoked with effect from 20 March 2023.

REASONS

25 1. The claimant's application for Interim relief made following submission of his unfair dismissal claim was successful and an Order for Continuation of Contract was issued on 10 February 2023.

30 2. The claimant and his representatives fulfilled their duty to the Tribunal by notification that the claimant had obtained alternative employment. The respondent's representative applied for revocation of the Order for Continuation of Contract, on the basis that there was a change in circumstances. A Hearing on that application was arranged to take place as soon as possible.

3. The claimant has obtained alternative employment, with start date of 20 March 2023 and from that date has received income at a higher rate than the income received under his contract of employment with the respondent. The claimant securing that new employment is a relevant material change in circumstances. The Order for Continuation of Contract is therefore revoked under section 131(1), with effect from 20 March 2023.
4. In taking the start date of the claimant's new employment as being the date for revocation of the Order for Continuation of Contract, I accept the respondent's representative's reliance on the position in *Zucker v Astrid Jewels Ltd [1978] ICR 1088*, *Bull v JNP Group Consulting Engineers Limited (ET Case No 1801490/2020)* and *Williams v G and R Cadwallader Ltd ET Case No.09465/87* (as referred to in IDS Volume 13 at chapter 18.35).
5. The respondent's representative's application for an Order to be issued on the claimant for repayment of sums paid to him by the respondent from 20 March 2023 to date is refused because the Employment Tribunal does not have jurisdiction to make such an Order. There are other remedies available to the respondent to seek repayment from the claimant of any overpaid sums.

20 **Employment Judge: C McManus**
Date of Judgment: 03 May 2023
Entered in register: 03 May 2023
and copied to parties