



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103763/2023

Held in Edinburgh on 22 September 2023

Employment Judge M Sutherland

Kirsten Lord

**Claimant
In Person**

PhysioMedics Limited (in Administration)

**Respondent
No response and
No appearance**

WRITTEN REASONS FOR A JUDGMENT

Introduction

1. A hearing took place on 22 September 2023. An oral judgment, with reasons, was given at the conclusion of the hearing. A written judgment, dated 22 September 2023 and sent to the parties on 25 September 2023, confirmed that judgment. On 27 September 2023, the Respondent requested written reasons for the judgment which are provided below.
2. The Claimant presented a complaint of breach of contract in respect of a failure to pay agreed arrears of pension contributions and outstanding expenses. The complaint was not resisted by the Respondent.

3. The Claimant had on her claim form referred to sex discrimination but she confirmed at the hearing that this was merely a comment and she did not seek to bring such a complaint.
4. A final hearing was listed for 22 September 2023 to determine all issues including remedy and was conducted by video (CVP).
5. The Claimant gave evidence on her own behalf. The Claimant also called Ross Hawthorn to give evidence. Whilst he attended the virtual hearing by waiting in the virtual lobby, by the time he was called to give evidence he was unavailable to do so because of a prior commitment. Following discussion with the Claimant it was determined that it was not necessary to hear his evidence.

Findings in fact

6. The Tribunal makes the following findings in fact:
7. The Respondent operated a physiotherapy business. The business was founded by the Claimant. When the business secured an investment a board was appointed including a commercial director. The Claimant was employed by the Respondent as the Founder and Chief Clinical Officer from 6 December 2010 until 18 May 2023. The Claimant was entitled under her contract to payment of pension contributions and of her expenses. The commercial director dissuaded the Claimant from insisting upon payment of her pension contributions and her expenses having regard to her status as founder.
8. Following dismissal of the commercial director, the Claimant approached the board regarding payment of her pension contributions and her expenses. In 2020 the board agreed that she was due arrears of pensions contributions in sum of £2,198.80 and arrears of expenses in sum of £2,864.68. (Her arrears of expenses pertained to her Health and Care Professions Council fees and her Chartered Society of Physiotherapists membership.) The board noted that sum as a debt on the balance sheet. The Claimant has not been paid that

debt. The board also agreed to pay her pension contributions and expenses going forward which they did. On 9 May 2023 the Respondent went into administration. The Claimant was dismissed by reason of redundancy on 18 May 2023.

- 5 9. The Claimant engaged in ACAS Early Conciliation from 26 to 27 June 2023. Her ET1 claim was lodged with the tribunal on 13 July 2023. The Claimant sought and received the permission of the Administrator to institute and continue with these proceedings. The Administrator confirmed that they did not propose to defend them.

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Observations

10. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur.
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11. The Claimant gave her evidence in a clear and cogent manner. Whilst it is noted that the Claimant was not cross examined, there was in the circumstances no reason to doubt the credibility and reliability of her evidence.

20 Relevant Law

12. Article 8 of the Extension of Jurisdiction (Scotland) Order 1994 provides that an employee may bring a claim for breach of contract which is arising or outstanding on termination of employment and which seeks damages for breach of contract or any other contract connected with employment.

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Decision

13. The Respondent reached agreement with the Claimant to pay her arrears of pension contributions and expenses in sum of £5,063.48. The failure to pay those arrears amounted to a breach of a contract which was connected with her employment and which was outstanding on termination of her employment.
14. The judgment of the Tribunal was that the complaints for failure to pay expenses and pension contributions succeeded and the Respondent was ordered to pay damages to the Claimant in the sum of £5,063.48.

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Employment Judge:	M Sutherland
Date of Judgment:	04 October 2023
Entered in register:	05 October 2023
and copied to parties	