



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Leavey

Respondent: (1) Flutter Limited (In Compulsory Liquidation)
(2) The Secretary of State for Business and Trade

HELD AT: Manchester, in public, by CVP **ON:** 2 May 2024

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In Person

First respondent : No attendance or representation

Second respondent: Mr P Soni, Lay representative

JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that :-

1. All the claimant's claims against Flutter Limited (in case nos. 2414467/2021 , 2415185/2021 and 2410777/2023) are dismissed upon withdrawal by the claimant.
2. By consent of the second respondent , the claimant was at all material times an employee for the purposes of s.182 of the Employment Rights Act 1996, and is entitled to seek payment of the relevant debts from the second respondent.
3. The claimant is to notify the Tribunal by **27 June 2024** whether she still pursues any claims for payment against the second respondent, and, if so, on what basis.

REASONS

1. The Tribunal convened to hear a preliminary hearing to determine the claimant's employment status. Following the compulsory liquidation of the first

respondent, by whom she says she was employed, the claimant applied for payments of notice pay and arrears of pay from the second respondent.

2. The second respondent had rejected her claims, on the grounds that she was not an employee of the first respondent.

3. At the outset of the hearing the Employment Judge discussed the position of the first respondent with the claimant . Whilst the Tribunal had previously imposed a stay, that had been lifted by the Tribunal on 13 December 2022. That was on the basis that consent to the claims continuing had been given by the Liquidator.

4. In the view of the Employment Judge , no such permission can be given by the Liquidator, only the (Companies) Court. As such, unless permission was obtained from that Court, the claims would have to remain stayed.

5. The Employment Judge and the claimant discussed the position. It was pointed out that whilst the claimant could recover more from the first respondent than the capped amounts that the second respondent could be ordered to pay her, she doubted that there would ever be any dividend from the liquidation from which to meet her claims, so she withdrew her claims against the first respondent, and consented to their dismissal.

6. The claimant gave evidence. She explained how, whilst the contract she entered with the first respondent at the outset was for the provision of services, it did not reflect what work she soon ended up doing, in effect largely running the first respondent's business.

7. Having heard that evidence and seen the documents produced, when it came to time for the submissions, Mr Soni for the second respondent conceded that the claimant was an employee for the purposes her entitlement to seek payment of the statutory debts from the second respondent. This was a sensible, pragmatic and entirely proper concession to make, and the Tribunal thanked him for it.

8. As this hearing was listed only to determine this preliminary issue, the Tribunal proceeded no further. It seems likely that the second respondent will pay the claimant the capped amounts due in respect of arrears of pay. There may, however, remain an issue with notice pay, as the claimant resigned. She accepts that, but says that she was constructively dismissed. If this claim is pursued, and resisted, another hearing will be necessary. If not , that will be the end of these claims.

9. The claimant is accordingly to notify the Tribunal no later than the date above as to her intentions.

**Case Nos. 2414467/2021
2415185/2021
2410777/2023**

Employment Judge Holmes
DATE: 2 May 2024

JUDGMENT SENT TO THE PARTIES ON
Date: 13 May 2024

FOR THE TRIBUNAL OFFICE