



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4105153/2022 Hearing by Cloud Video Platform (CVP) at Edinburgh  
on 30 November 2022**

**Employment Judge: M A Macleod**

**M Smith**

**Claimant  
In Person**

**Aspirational Brands Limited**

**Respondent  
Represented by  
Mr A Prince  
Consultant**

## **ORDER OF THE EMPLOYMENT TRIBUNAL**

**Under Rule 29 of the Employment Tribunals Rules of Procedure 2013, the  
Employment Judge now issues the following case management order:**

- 1. The respondent shall, within 14 days of the date of this Decision,  
submit to the Tribunal and to the claimant full details of The  
Handmade Burger Company, including their full trading name, their  
company headquarters' address and confirmation of their status on  
the Companies Register, if appropriate.**
- 2. The Tribunal shall then require that The Handmade Burger Company  
be sisted as second respondent in these proceedings, and that a copy  
of the ET1 claim form shall be served upon them at that time.**

**You may make an application under Rule 29 for this Order to be varied, suspended or set aside. Your application should set out the reason why you say that the Order should be varied, suspended or set aside. You must confirm when making the application that you have copied it to the other party and notified them that they should provide the Tribunal with any objections to the application as soon as possible.**

**If this order is not complied with, the Tribunal may make an Order under Rule 76(2) for expenses or preparation time against the party in default.**

**If this order is not complied with, the Tribunal may strike out the whole or part of the claim or response under Rule 37.**

**Any person who without reasonable excuse fails to comply with this Order shall be liable on summary conviction to a fine of £1,000.00.**

## **REASONS**

1. The claimant presented a claim to the Employment Tribunal on 16 September 2022 in which she complained that she had been unlawfully deprived of notice pay, accrued holiday pay, and pension contributions by the respondent.

2. The respondent submitted a short ET3 response in which they simply stated that the claimant was not employed by them.

3. A Hearing was listed to take place by CVP on 30 November 2022. In advance of the Hearing, the claimant presented a number of documents, to which reference was made during the Hearing.

4. The claimant appeared on her own behalf, and Mr Prince, a Consultant to the respondent, appeared for the respondent.

5. Based on the evidence and information presented, the Tribunal was able to find the following facts admitted or proved.

### Findings in Fact

- 5           6. The claimant commenced employment with the respondent as a Supervisor on 21 September 2021.
7. Her employment was terminated on 26 July 2022.
8. She worked at a restaurant known as The Handmade Burger Company, in Union Square, Aberdeen. She understood it to be run by the respondent and Alphadean Limited.
- 10          9. On appointment, she was provided with a contract of employment dated 21 September 2021. The contract stated that it was between “Aspirational Brands Ltd (*Alphadean Ltd trading as Handmade Burger Co*)” and the claimant.
- 15          10. In paragraph 2, the contract provided that “*Your employment with Handmade Burger Co, which commenced on 21<sup>st</sup> September 2021 with Handmade Burger Co Aberdeen, counts towards your period of continuous employment with the Company.*”
- 20          11. The claimant’s probationary period was for 6 months (paragraph 5), and accordingly came to an end on 21 March 2022. The claimant confirmed in evidence that she was not told that her probation had been unsuccessful, nor that it had been extended.
- 25          12. In paragraph 15.1, the contract stated that the claimant’s contract of employment was terminable by notice set out therein, and in the claimant’s case, because she was in the period between completion of the probationary period until 4 years’ service, her notice period was one month.
13. On 26 July 2022, the staff attended a meeting to which they had been invited in the previous days. They had no notice as to what was to be discussed at the meeting. The Head of Operations was present, together

with Chris Docherty and Terry Gillies. They advised the staff that the restaurant was closing and that they would be dismissed without notice.

14. The claimant's last day of employment was 26 July 2022. She did not return to work for the respondent after that date.

5 15. The claimant was provided with a letter, dated "05/07/22", (which must be an error), filed at p65 of the Tribunal's digital file, which stated:

*"Dear Michelle,*

*Further to the meeting on 26<sup>th</sup> July at Aberdeen Handmade Burger Ltd, we would like to confirm your redundancy payments.*

10 *Set out below is the calculation of your settlement in line with government guidelines and in line with your age, length of service and current salary..."*

16. The letter went on to confirm that the claimant was not entitled to a redundancy payment; that her notice period was 1 month, and that her notice pay was £1,311.63; and that her accrued holiday pay was £171.63.

15 The claimant agreed with these figures.

17. It confirmed that she would be paid on 15 August 2022.

18. The claimant was not paid on 15 August 2022. To the date of the Tribunal hearing, the claimant has not received any payment in respect of notice or holiday pay from the respondents.

20 19. She was subsequently sent a message from the respondent saying that she would be paid on 31 August 2022, but only one week's pay, which appeared to relate to a cashflow problem encountered by them. Still no payment was received.

25 20. Mr Prince, appearing for the respondent, accepted that the claimant was due the sums which she claims, and that one month was the appropriate period of notice to be granted the claimant.

21. However, he disputed that the respondent employed the claimant, and gave evidence that the claimant was employed by The Handmade Burger Company. The respondent in this case is not a trading entity, and has no

assets, so if the claimant were awarded any sum of money against Aspirational Brands Limited, she would receive nothing from them. The Handmade Burger Company continues to trade.

### **Discussion and Decision**

5        22. It is plain that the claimant's claim is a valid claim, and that she should succeed.

23. However, what is also plain is that the claimant's claim is directed against a company which does not trade and which, according to the evidence of Mr Prince, was not the claimant's employer nor has any assets to pay any  
10        award.

24. It would not appear to me to be in the interests of justice to make an award against the respondent in these circumstances, despite the fact that Mr Prince accepts that the claimant is due the money she seeks. Further, it is clear, in my judgment, that the claimant is due one month's notice pay,  
15        together with the accrued holiday pay which is outstanding.

25. I am not satisfied at this stage that an award should be made against the respondent. On the basis of Mr Prince's evidence, which was not significantly challenged by the claimant, I have concluded that it is necessary to introduce The Handmade Burger Company as a second  
20        respondent in order to ensure that any Judgment may be enforced properly.

26. The difficulty which the Tribunal has is that there is no address given for The Handmade Burger Company on any of the documents produced to me. Accordingly, I am issuing an Order, set out at the start of this Decision, requiring the respondent to provide the Tribunal with full details of The  
25        Handmade Burger Company within 14 days of this Judgment, so that they may then be sisted as second respondent in these proceedings, in terms of Rule 34 of the Employment Tribunals Rules of Procedure 2013.

27. I consider this step to be a necessary precursor to issuing a Judgment in this case, in the interests of justice.

**Employment Judge: M A Macleod**

**Date of Order: 30 November 2022**

**Date Sent to Parties: 1 December 2022**

I confirm that this is my Decision and Orders in the case of Smith v Aspirational Brands Limited and that I have signed the Decision and Orders.