

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104667/2012

5 Held in Glasgow on 18 September 2017

Employment Judge Shona MacLean

10 Miss S Farquhar Claimant

15 Jennifer Mary Mead Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Default Judgment dated and
20 issued to parties on 21 June 2012 is revoked.

REASONS

1. On 21 June 2012 in respect that no response had been presented to the
Employment Tribunal office within the relevant time limit I issued a default
judgment in terms of rule 8 of Schedule 1 to the Employment Tribunals
25 (Constitution and Rules of Procedure) Regulations 2004 in the following
terms (the Default Judgment):

“1. *The claim under Section 23 of the Employment Rights Act 1996 is well
founded and the respondent shall pay to the claimant the sum of
£656.64 as unlawful deduction of wages.*

30 2. *The claim under Regulation 30(1)(b) of the Working Time Regulations
1998 is well founded and the respondent shall pay the claimant the
sum of £164.16 as a payment in lieu of annual leave.*

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3. *The respondent shall pay to the claimant the sum of £309.19 as damages for breach of contract (failure to give notice of termination of employment).*

4. *The claim under Section 38 of the employment Act 2002 is well founded and the respondent shall pay to the claimant £1,236.76 being 4 weeks pay.”*

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2. On 22 March 2017 an email sent by Jenny Meade (Ms Meade) to the Employment Tribunal office on 15 March 2017 at 13:07 was referred to me. The email formed part of a chain of emails between Ms Meade and the civil court administration at Glasgow Sheriff Court (the Email).

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3. Having considered the Email I decided to treat it as an application requesting me to reconsider the Default Judgment. Given that the application was received more than 14 days after the date on which the Default Judgment was sent to parties (21 June 2012) I first considered whether to extend the time limit for making the application.

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4. Unfortunately given the lapse of time the original claim form (ET1) and correspondence was no longer available. I obtained a copy of the Default Judgment from the Register of Decisions.

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5. My understanding of the Email was that Ms Meade was unaware of the Default Judgment until the end of 2016 when she received “demands” from Hannahs, Messengers at Arms and Sheriff Officers. More recently the claimant’s “legal representatives” had contacted Ms Meade about her assets. Ms Meade has been contacting the Employment Appeal Tribunal and Glasgow Sheriff Court to resolve the situation. Ms Meade maintained that she did not employ the claimant and therefore has no liability. The address at which the claim form was sent, 72 Victoria Street, Rothesay was an empty property.

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6. In the circumstances I decided that it was in accordance with the overriding objective to extend the time limit form making the application for reconsideration. Ms Meade was advised of this and told that a copy of the

Email was being sent to the claimant. Comments were sought from both parties as to whether the application could be determined without a hearing.

7. The correspondence was sent to the claimant at the address stated on the Default Judgment. No response was received from the claimant. Ms Meade was asked if she had an alternative address for the claimant. Ms Meade understood that the claimant had remarried and might be living in Greenock. Further JMW Solicitors LLP represented the claimant.
8. I directed that JMW Solicitors LLP should be asked if they had any record of representing the claimant in these proceedings. They replied advising that the current address for the claimant was 20E Prospecthill Street, Greenock, Pa15 4DL. I then directed that all the correspondence should be sent to the claimant at this address with a request that the claimant write to the Employment Tribunal office clarifying her position. In the absence of any response from the claimant JMW Solicitors were asked if they continued to represent her. They replied that they were no longer representing the claimant in this matter. I directed that a letter be sent to the claimant at the address in Greenock advising that unless a reply was received by 7 August 2017 the reconsideration application would be consider by me based on the information available. No reply was received from the claimant.
9. Ms Meade and the claimant were then advised that I would deal with the application for reconsideration by written submissions and if they had anything further to add they should write to the Employment Tribunal office by 23 August 2017. Ms Meade has not provided any additional information to the Email. The claimant has not replied to any correspondence.
10. The information that I have before me is:
- a. The Default Judgment.
 - b. The Email which provides the following background information:
 - i. Ms Meade was a director of Jen's Boat Bistro Limited, registered office 72 Victoria Street, Rothesay, Company, number 410823 (the Company). When the proceedings were

- raised the electoral register showed Ms Meade as residing at 49 Castle Street, Port Bannatyne, Isle of Bute.
- ii. The Company employed the staff including the claimant. All the employees were paid up to 28 February 2012.
 - 5 iii. An incident occurred on 28 February 2012 when the claimant locked everyone out of the premises with a new padlock.
 - iv. When the proceedings were raised 72 Victoria Street, Rothesay was an empty property to which Ms Meade did not return "after the close of business".
 - 10 v. The Company went into voluntary liquidation on 20 May 2012.
- c. A print out from Companies House for Jen's Boat Bistro Limited, (SC410823), showing that it was incorporated 8 November 2011. Ms Jennifer Mary Meade appointed as director on 21 November 2011. The Company was dissolved on 31 May 2013.
- 15 11. The claimant must have sent the claim form to the Employment Tribunal office at least 28 days before the Default Judgment was issued to the parties. It is therefore likely that the claimant sent the claim form before 20 May 2012 as the Employment Tribunal has then to send a copy of the claim form to the respondent by post. The respondent has 28 days to send a response to the Employment Tribunal office. After the period for sending the response has elapsed the papers would have been sent to me to consider
- 20 issuing a default judgment.
12. From the Default Judgment I assume that the claim form was sent to Ms Meade at 72 Victoria Street, Rothesay. This was the address provided by
- 25 the claimant in the claim form. The Employment Tribunal is funded out of the public purse. It does not have the time and resources to "check the validity of facts, names and address before proceeding with the case".
13. My understanding is that by early May 2012 the business was no longer trading and the property was empty. Ms Meade did not return to the property. It would seem that she did not arrange with the Post Office for mail
- 30 to be redirected. The Post Office did not return the correspondence to the

5 Employment Tribunal office. Given that at that time the claimant lived in the same postal district she must have been aware that the business was no longer trading at that address and Ms Meade was not residing there. When the claimant was advised that no response was presented she did not volunteer this information. Had she done so the Employment Tribunal would have offered to send the claim form to any other address she could provide for Ms Meade.

10 14. I was satisfied that Ms Meade did not receive the claim form. Has she done so I have no doubt that she would have returned the response form to the Employment Tribunal office resisting the claims. I reached this view because Ms Meade maintains that the Company employed the claimant. Accordingly, Ms Meade did not have personal liability. In addition, Ms Meade does not consider that the Company is liable to pay the sums claimed by the claimant.

15 15. I appreciated that the claimant's position is the she was employed by Ms Meade. However, had I been aware that Ms Meade had not received a copy of the claim form and that there was a dispute over the identity of the claimant's employer and whether any sums were due I would not have issued the Default Judgment.

20 16. In the circumstances, I considered that it was appropriate to revoke the Default Judgment. The consequence of this decision is that Ms Meade can put in a response to the claim and the case will then proceed to a hearing to determine who employed the claimant and what if any sums are properly due.

25 17. I am mindful that if a Tribunal finds that the claimant was employed by the Company it had been dissolved (ceased to exist). It will therefore not be possible for the Company to become a party to the proceedings so that the claimant might recover any sums that she claims to be due from the Company. Given the passage of time; the fact that the case will need to proceed to a hearing and the claimant has not responded to recent
30 correspondence I direct that a copy of this judgment be sent to the claimant

at her last known address along with a letter inviting her to write to the Employment Tribunal office no later than 4 October 2017 advising whether she wishes to continue her claims against Ms Meade.

- 5 18. If the claimant confirms that she does want to continue with the claims then Ms Meade will be provided with a response form and directed to complete it. The case will be listed for a hearing. If the claimant advises that she does not wish to pursue the claims they will be dismissed. If the claimant does not reply to the correspondence consideration will be given by me to striking out the claims on the basis that they are not being actively pursued.

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Employment Judge: S. MacLean

Date of judgment: 18 September 2017

Entered in register and copied to parties: 19 September 2017

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