



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104721/2018**

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**Held in Glasgow on 15 February 2019**

**Employment Judge: Iain F. Attack**

10 **Miss F Morrison**

**Claimant  
Represented by:  
Mr M Dempsey -  
Solicitor**

15 **Laura Dewar**

**First Respondent  
No appearance and  
No representation**

20 **Shena Dewar**

**Second Respondent  
No appearance and  
No representation**

25 **Tommy McMillan – Alchemy Inns Ltd**

**Third Respondent  
No appearance and  
No representation**

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**Midas Clachan Limited**

**Fourth Respondent  
No appearance and  
No representation**

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**Pennies Sports Bar Ltd**

**Fifth Respondent  
No appearance and  
No representation**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is

1. That at the time of the termination of her employment the claimant's employer was Laura Dewar, the First Respondent.

**E.T. Z4 (WR)**

2. The claims against the Second, Third, Fourth and Fifth Respondents are dismissed.

## REASONS

### Introduction

- 5 1. The claimant in this case brings claims for unfair dismissal, a redundancy payment, wrongful dismissal, a failure to provide reasons for dismissal and a failure to provide written terms and conditions of employment. She named four different potential respondents and, following a preliminary hearing on 26 September 2018 a further respondent was added. The purpose of this hearing  
10 is to determine the correct identity of the employer.
2. Pennies Sports Bar Ltd. which was added as a respondent following the preliminary hearing, failed to present a response. With the exception of Tommy McMillan - Alchemy Inns Ltd none of the other respondents had  
15 presented a response either.
3. When the case called none of the respondents were present. That was in spite of Laura Dewar and Shena Dewar having been served with an Order to attend as a witness dated 30 January 2019.  
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4. The clerk made contact with Mr McMillan, by telephone, who advised that he had been injured at work the previous week and was unable to attend the hearing. He explained that he had seen a chiropractor twice and required to have a further session.  
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5. As the other respondents had not presented a response they were not entitled to take part in the proceedings, without the permission of the employment judge. Although Mr McMillan was not present I decided to proceed in his absence in terms of rule 47 of the first schedule of the Employment Tribunals  
30 (Constitution and Rules of Procedure) Regulations 2013. I considered that he had had ample opportunity before this hearing to inform the tribunal that he would not be able to attend and to have produced a relevant medical certificate.

6. Mr Dempsey for the claimant, produced a bundle of documents extending to 681 pages. In fact, only about 20 pages of that bundle were actually referred to. The documents will be referred to in this judgement by reference to the page number.

7. The claimant gave evidence on her own behalf and no further witnesses were called.

### Facts

8. From the documents to which I was referred and the evidence which I heard I made the following material findings in fact.

9. The claimant has worked in the bar at Pennies bar for many years. She has retained payslips for 13 of those years.

10. In about 2005 the claimant's employer was Alchemy Inns Ltd.

11. In August 2008 the business, carried on as Pennies bar, was transferred by Alchemy Inns Ltd to MD Pubs Ltd. The claimant's employment transferred to that new employer, page 58.

12. MD Pubs Ltd ceased to trade in about April 2011.

13. The business was then carried on by Alchemy Inns Ltd until 2013. The claimant remained carrying out her duties.

14. In about September 2013 the business of Pennies bar was taken over by Sandra and Steven Allison. The claimant's employment was transferred to the business being carried on by Mr and Mrs. Allison.

15. The claimant continued to receive payslips showing her employer as being Alchemy Inns Ltd even after Mr Mrs. Allison were running the business. The explanation for that was because Alchemy Inns carried out the payroll function for Mr and Mrs. Allison.

16. Mr and Mrs. Allison ceased to operate Pennies bar at the beginning of 2017.
17. The business of Pennies bar was taken over by Laura Dewar.
- 5 18. Laura Dewar had been in charge of the kitchen in Pennies bar when that business was being operated by Mr and Mrs. Allison.
- 10 19. Before Mr and Mrs. Allison left their business they held a meeting with the staff and advised them that they were leaving the business and that it was being taken over by Laura Dewar.
- 15 20. The claimant continued to work in Pennies bar after Mr and Mrs. Allison had left. She reported to Laura Dewar.
- 20 21. The claimant was not given any documentation stating the identity of her employer.
22. The claimant was paid in cash by Laura Dewar for the work which she carried out. The cash payment was taken out of the takings for the business.
- 25 23. The claimant has received payslips for the period ending 3 June 2016 and 2 February 2017 showing her employer as being a business called Midas, pages 624 and 645.
24. She received a payslip dated 16 March 2017 showing her employer as a company called Pennies, page 646.
- 30 25. She received a payslip dated 5 May 2017, page 650 showing her employer as a company called Midas Clachan.
26. She received a payslip showing her employer as Pennies for the period ending 2 June 2017, page 654.
- 35 27. She received a payslip purporting to show her employer as Midas Clachan dated 9 June 2017, page 655.

28. The claimant did not recognise names of the purported employers on these payslips.
- 5 29. Laura Dewar ceased to trade from Pennies bar on Sunday, 25 February 2018. The public house has not operated since that date.
30. The claimant's last shift was on Saturday, 24 February 2018.
- 10 31. The claimant requested from Laura Dewar a P 45 following termination of her employment. She received that document showing 7 March as the date of termination of her employment. That document, page 175, shows the employer to be Midas Clachan.
- 15 32. It is the claimant's belief that Midas Clachan is a business operated by Sandra Allison. Mrs. Allison ceased to operate from Pennies bar in early 2017.
33. The claimant asked Laura Dewar for what was owed her in respect of accrued but untaken holidays. Laura Dewar transferred payment to the claimant's bank account of £43.86 on 8 March 2018.
- 20 34. The payment to the claimant is shown as having been made by "L Dewar", page 681.
- 25 35. The claimant has no knowledge of the company called Pennies Sports Bar Ltd. she has received no communication from such a company.

### **Submission**

36. Mr Dempsey submitted that there had been a series of Tupe transfers during the period of the claimant's employment. The final transfer was to Laura Dewar.
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37. It was his submission that the correct employer could only be either Laura Dewar or Pennies Sports Bar Ltd. He submitted it was in fact Laura Dewar.

There was no evidence that Pennies Sports Bar Ltd had ever been involved in employing the claimant.

5 38. The documents he said, were not of particular assistance and he submitted that little weight should be placed upon the wage slips or tax records as an indicator of the true employer. The claimant did not recognise the names on some of the payslips she had been given.

10 39. The pub had closed on 28 February 2018 and had not reopened. There was no question of a further Tupe transfer after that date.

40. The final payment to the claimant had been made from Laura Dewar personally and he submitted that she was the correct employer.

### Decision

15 41. The issue for the employment tribunal to determine is who was the correct employer of the claimant at the time of termination of her employment.

20 42. The claimant has been employed working in the bar at Pennies bar for many years. Throughout those years there have been several changes in ownership and the claimant has transferred on each occasion to the employment of the new owner.

25 43. With the exception of Mr McMillan none of the other respondents presented a response. Although Laura Dewar and Shena Dewar were ordered to attend as witnesses by Order dated 30 January 2019 neither appeared nor gave any explanation for their non-attendance. They had not applied for the Order to be varied, suspended or set aside.

30 44. As a result the tribunal had to rely on the evidence of the claimant and the documents produced by her in reaching a decision. I also considered the contents of the response form presented by Mr McMillan and the Note issued following the preliminary hearing on 26 September 2018.

45. I concluded that none of the payslips referred to by the claimant in her evidence were of any assistance in determining was her employer at any given time. It appeared that Alchemy Inns Ltd had provided the payroll service for those running the business after Alchemy Inns Ltd itself had ceased to do so. Quite why the various names of different employers appeared on the payslips is unknown. I am however satisfied from the documents to which I was referred that the various names shown of purported employers is almost meaningless.
46. Even the P45 provided by Laura Dewar, at the request of the claimant, shows as the employer a company which in the claimant's belief is operated by Sandra Allison and has nothing to do with Laura Dewar.
47. When Mr and Mrs. Allison were leaving the business, they informed the claimant and other staff that it was being taken over by Laura Dewar. There was no mention that the business being taken over was to be operated by any limited company and the only reference as to whom the business was being transferred was to Laura Dewar herself.
48. Prior to Mr and Mrs Allison ceasing to trade from Pennies bar Laura Dewar worked in the kitchen at Pennies bar. She did not inform the claimant that the statement made by Mr and Mrs Allison that she was taking over the business was in any way inaccurate. She sustained the belief by the claimant that following the departure of Mr and Mrs Allison her new employer was Laura Dewar.
49. It is noteworthy that the final payment made to the claimant was made by Laura Dewar in a personal capacity. The payment came from Laura Dewar's bank account to the claimant. It did not come from the bank account of any limited company.
50. The claimant had stated that payment of wages was always made in cash out of takings. That is how Laura Dewar paid her.

51. From the evidence I concluded that the correct identity of the employer was Laura Dewar.

52. The claim insofar as directed against Sheena Dewar, Tommy McMillan –  
5 Alchemy Inns Ltd, Midas Clachan Ltd and Pennies Sports Bar Ltd are all dismissed.

53. The case will now be listed for a full hearing on the merits against Laura Dewar.

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**Employment Judge**

**I Atack**

**Date of Judgment**

**25 February 2019**

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**Entered in register**

**27 February 2019**