



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No:4102679/2020 (V)

Hearing held in Edinburgh by CVP on 25 October 2021 and 11 May 2022

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Employment Judge: J McCluskey

Ms C Belle

**Claimant
In person**

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Sophie Amono

**Respondent
In person**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant was not employed by the respondent. The Tribunal has no jurisdiction to consider the claims against the respondent and the claims are therefore dismissed.

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REASONS

Introduction

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1. In this case the claimant makes claims against the respondent, Sophie Amono, for unfair dismissal after exercising or claiming a statutory right, breach of contract (notice pay), unpaid wages and holiday pay.
2. The final hearing commenced on 25 October 2021 before me. Both parties had produced separate bundles of documents, which they had exchanged

with each other. The claimant's bundle of documents extended to 11 pages. The respondent's bundle of documents extended to 87 pages. Both parties made reference to documents in their own bundle during evidence. I explained to parties that any documents which they wished me to consider from either bundle needed to be brought to my attention during the hearing.

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3. Ms Amono gave evidence first. During the course of her evidence, on the morning of 25 October 2021, Ms Amono said that the claimant was employed by Let's Do Stuffs Ltd rather than by Ms Amono herself. There was reference to Let's Do Stuffs Limited in box 6.1 of the ET3 although Ms Amono had stated in box 2.1 of the ET3 that she was the respondent. On further enquiry by me, Ms Amono said that Let's Do Stuffs Ltd had been owned by her but was no longer trading and indicated that the company was dissolved.

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4. I discussed the matter with the parties. Ms Belle wished some time to consider her options. Ms Amono did not object to this. Having considered matters I determined that it was in line with the overriding objective to adjourn the final hearing, part heard, to give Ms Belle an opportunity to consider her options and to take advice if she wished to do so.

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5. I issued Orders dated 27 October 2021 requiring Ms Amono to provide further information to the Tribunal and to Ms Belle about the status of Let's Do Stuffs Limited and requiring Ms Belle to notify the Tribunal how she wished to proceed. The Note accompanying my Orders stated that it was not possible for a claim to be raised against a dissolved company unless the company had been restored to the Register of Companies.

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6. In response to my Orders dated 27 October 2021, Ms Amono provided the Tribunal with a copy of a final Gazette Notice showing that Let's Do Stuffs Ltd had been dissolved on 29 June 2021 and she confirmed that this remained the position. A copy was also provided to the claimant.

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7. In subsequent correspondence with the parties, I explained to Ms Belle that her claim was not currently raised against Let's Do Stuffs Limited. I explained that her claim was raised only against Ms Amono. I identified to Ms Belle that in box 2.1 of her ET1 form she had inserted Sophie Amono as her employer or the person or organisation against whom she was making a claim. I identified to Ms Belle that at box 2.5 of her ET1 form there was an opportunity for Ms Belle to add additional respondents at the time of lodging her claim. Ms Belle had not added any additional respondents. I explained to Ms Belle that if she wished to add Let's Do Stuffs Limited as an additional or substitute party to her Tribunal claim, firstly she would need to apply to the Sheriff Court to have Let's Do Stuffs Limited restored to the Register of Companies. I explained that information on how to do this is available on the Companies House website.
8. On 4 April 2022 Ms Belle confirmed that she understood that her claim was raised against Ms Amono only and not against Let's Do Stuffs Limited. She confirmed that she wished to continue her claim against Ms Amono only. She confirmed that she did not wish to proceed with an application to have Let's Do Stuffs Limited restored to the Register of Companies. A continued final hearing against Ms Amono was fixed for 11 and 12 May 2022.
9. The continued final hearing took place before me on 11 May 2022.

25 **Issues**

10. The Tribunal had to determine the following issues:
- a. Who was the employer of Ms Belle? Was it Ms Amono (the respondent) or Let's Do Stuffs Limited?
 - b. If the employer was the respondent Ms Amono, then:

(i) was Ms Belle unfairly dismissed after exercising or claiming a statutory right? If so, how much is she due by way of compensation for such dismissal?

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(ii) was there a breach of Ms Belle's contract of employment, and if so how much notice pay is due?

(iii) was Ms Belle due unpaid wages, and if so how much?

11. The claimant had also raised a claim for payment of accrued but untaken holiday entitlement. During the course of the continued hearing she withdrew this claim and confirmed that any entitlement to holiday pay had been paid to her.

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Findings in fact

The Tribunal made the following findings in fact

12. Ms Belle was employed by Let's Do Stuffs Limited from 3 February 2020 to 12 April 2020 when her employment was terminated.

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13. Ms Amono incorporated the limited company Let's Do Stuffs Limited in December 2019. At the time of incorporation she was the only employee of the company. Ms Belle and one other employee were recruited on 3 February 2020 and a further employee was recruited in March 2020.

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14. The limited company Let's Do Stuffs Limited traded under the name "Stuffs".

15. On 28 January 2020 Ms Belle received an email from Ms Amono which stated "Following your examples of work and interview I would be delighted to offer you the role of Creative Project Officer" The email was sent from Ms Amono's email address @ idostuffs.co.uk. The footer of the email read "Stuffs" and underneath there was a website address ending in @letsdostuffs.co.uk.

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16. On 2 February 2020 Ms Belle received an email from Ms Amono from the same email address. The email was addressed to Ms Belle and stated “Please find attached your contract of employment. If you could send me over your address and bank details for payroll that would be fantastic.....Our team folders are all saved on the drive and I have just shared access with you”.
17. The contract of employment attached to the email of 2 February 2020 stated in clause 1 “Your employment with the Company commenced on 3rd February 2020”. The contract of employment thereafter referred to “the Company” throughout. The identity of “the Company” was not stated in the contract of employment.
18. The contract of employment was on notepaper with the name “Stuffs” at the bottom of each page. At the bottom of each page there was a website address for letsdostuffs.co.uk.
19. Ms Belle signed the contract of employment on 3 February 2020.
20. At the end of the contract of employment it stated “Signed by Sophie Amono, For and on behalf of Stuffs”.
21. During Ms Belle’s employment she was allocated an email address for carrying out her duties. Her work email address ended @letsdostuffs.co.uk.
22. Ms Belle and the other two employees of Let’s Do Stuffs Limited were paid from Ms Amono’s own bank account for work done in March 2020 as the company did not have a business banking account at that time.
23. In April 2020 Ms Belle and Ms Amono were engaged in email discussion about wages due to Ms Belle. In an email from Ms Belle to Ms Amono on 5 April 2020 Ms Belle said “I still worked those two days. I understand that these two accounts were my main accounts, but as I am a contractual

employee of Stuffs, I had additional responsibilities that I continued to carry out on these days”.

5 24. On 12 April 2020 Ms Belle’s employment was terminated due to underperformance. The termination letter had the name Let’s Do Stuffs Limited at the top. At the bottom of the notepaper there was the same Stuffs logo and website address as on the contract of employment.

10 25. Let’s Do Stuffs Limited opened a business banking account in May 2020. Payments were made to employees from the business banking account once it was opened. By this time Ms Belle’s employment had been terminated.

26. Let’s Do Stuffs Limited was dissolved on 29 June 2021.

15 **Relevant Law**

27. An employee means an individual who has entered into or works under a contract of employment (section 230(1) ERA). A contract of employment means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing (section 230(2) ERA).

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Submissions

Both parties made short oral submissions.

25 28. Ms Amono submitted that the documentation showed that Ms Belle was employed by Let’s Do Stuffs Limited trading as Stuffs. She submitted that Ms Belle was aware that she was employed by the company and not by Ms Amono as an individual. Ms Belle had acknowledged in her email of 5 April 2020 to Ms Amono that she was employed by Stuffs. Ms Belle’s employment was terminated by Let’s Do Stuffs Limited due to underperformance and not for any other reason. Ms Amono had communicated with Ms Belle about the

furlough scheme and explained that she was ineligible to participate in the scheme. Ms Belle had been paid all monies due to her.

- 5 29. Ms Belle submitted that she had been unfairly dismissed for asking about furlough and wages which she believed were due to her. She submitted that she was still due to be paid wages for end March and April 2020 and Ms Amono did not have a contractual right to withhold these. She had been paid her wages in March 2020 from Ms Amono's own bank account and not from a company bank account. She considered that outstanding sums which were
10 due to her should be paid by Ms Amono.

Discussion and decision

- 15 30. Although this case was set down for a final hearing on liability and remedy, Ms Belle's claims could only be decided by the Tribunal in the event that the Tribunal decided, first of all, that Ms Amono was her employer. This had been the subject of discussion by me with Ms Belle and Ms Amono as already set out elsewhere in this judgment.

- 20 31. Having heard evidence and considered the documents to which I was referred, I have reached the decision that Ms Belle was employed by Let's Do Stuffs Limited from 3 February 2020 and throughout her employment. As Let's Do Stuffs Limited are not a party to this claim, the Tribunal does not have jurisdiction to decide Ms Belle's claims for unfair dismissal for asserting a statutory right, notice pay and wages.

- 25 32. I have reached the decision that Ms Belle was employed by Let's Do Stuffs Limited as the paperwork provided to her pointed to Let's Do Stuffs Limited being her employer. It is unfortunate that the contract of employment, when it referred to the employer as "the Company", did not state the name of the
30 company. The contract of employment was however on branded notepaper

with the name “Stuffs” and the notepaper also showed a website address for letsdostuffs.co.uk.

5 33. I had regard to the email communication from Ms Amono to Ms Belle with the offer of employment on 2 February 2020. The email had a Stuffs footer and the email address of Ms Amono was @letsdostuffs.co.uk.

10 34. I had regard to the email correspondence from Ms Belle to Ms Amono during her employment. Ms Belle had the same Stuffs footer on the work emails which she sent and her email address was @letsdostuffs.co.uk. This indicated to me that Ms Belle was carrying out her duties on behalf of Let’s Do Stuffs Limited trading as Stuffs.

15 35. Ms Amono explained in her evidence that Stuffs was the trading name of Let’s Do Stuffs Limited. That is consistent with the Stuffs branding on documentation and emails and I accepted that this was the case.

20 36. On balance therefore I was satisfied that the contract of employment, signed by Ms Amono on behalf of Stuffs, was an offer of employment by Let’s Do Stuffs Limited and that Ms Belle accepted an offer of employment with Let’s Do Stuffs Limited when she signed the employment contract.

25 37. I was mindful that in email correspondence from Ms Belle to Ms Amono on 5 April 2020, Ms Belle stated “I am a contractual employee of Stuffs...”. It appears clear that as at that date Ms Belle did not consider herself to be an employee of Ms Amono but rather an employee of another legal entity whom she referred to as Stuffs.

30 38. I also had regard to the letter of termination dated 12 April 2020. The letter had the name Let’s Do Stuffs Limited at the top. At the bottom of the notepaper there was the same Stuffs logo and website address as on the contract of employment.

39. On balance therefore I was satisfied that Ms Belle was employed by the company Let's Do Stuffs Limited for the duration of her employment from 3 February 2020 to 12 April 2020 when her employment was terminated.

5 40. Ms Belle was unable to offer much by way of an explanation as to why she considered that she was employed by Ms Amono and not by Let's Do Stuffs Limited, trading as Stuffs. She relied on the fact that her salary for March 2020 had been paid by Ms Amono and not the company. The evidence from Ms Amono was that the company did not yet have a business bank account
10 having employed its first member of staff, apart from Ms Amono, in March 2020. I accepted this evidence.

41. Ms Belle did not provide any explanation as to why in her email to Ms Amono of 5 April 2020 she had said she was a contractual employee of Stuffs. It
15 appeared to me that when requesting wages which she considered were due to her, Ms Belle considered that she was employed by Stuffs and not Ms Amono.

42. Ms Belle also explained to the Tribunal, candidly, that she had been advised
20 to bring her claim against Ms Amono rather than Let's Do Stuffs Limited, as the company had been dissolved. On balance therefore I am satisfied that the claimant was employed by Let's Do Stuffs Limited and not by Ms Amono.

43. Having determined that the claimant was employed by Let's Do Stuffs Limited
25 and not the respondent Sophie Amono, the Tribunal has no jurisdiction to consider Ms Belle's claims for unfair dismissal for asserting a statutory right, notice pay and wages, which claims are therefore dismissed.

30 Employment Judge: Jacqueline McCluskey
Date of Judgment: 24 May 2022
Entered in register: 24 May 2022
and copied to parties