



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4123628/2018**

**Held in Glasgow on 1 March 2019**

**Employment Judge: David Hoey**

**Miss D Grant**

**Claimant  
In Person**

**Kirsty MacArthur & others**

**Respondent  
Not present and  
Not represented**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Claim Form and this Note are to be served on MacArthur Leisure Limited (with company number SC400617) or MacArthur Wellness Clinic Limited (with company number SC525367) who are added as respondents to this claim, with said bodies to lodge a response form, if so advised, within 28 days of the date the forms are issued to allow those bodies to confirm whether or not they employed the claimant and their response to the claims as further specified in this Note.

### **REASONS**

1. This case called as a final Hearing following a claim form that the claimant had lodged with the Tribunal that had been accepted on 15 December 2018. The claimant was seeking payments of various sums, including holiday pay and notice pay.

#### **Background**

2. In her claim form (at box 2.1) she identified her employer as “Kirsty MacArthur” with an address. She had also ticked box 2.5 to say there were other respondents. In this section she repeated the above name and address.

3. The claimant had initiated early conciliation via ACAS in respect of 2 entities, namely MacArthur Wellness Limited and MacArthur Wellness Clinic Limited (both at the same address as the claimant had included for Kirsty MacArthur).
4. An Employment Judge had accepted the claims and on 18 December 2018 the claim form was served on the respondent named at box 2.1. No response form was lodged.
5. The uncertainty as to the claimant's employer had been identified by another Employment Judge and the claimant was asked to "bring documentation showing the identity of" the claimant's employer to the Hearing. That letter was copied to the respondent who had chosen not to attend the Hearing.

#### **The issue as to the claimant's employer**

6. The claimant explained that she had secured her role via a friend. She candidly explained that it had never in fact been clear who her employer was. She worked for the individual whose details she included in the claim form but she knew that there were companies that the individual in question had ran.
7. She had considered the position prior to the Hearing and following discussion as to the issue, she explained that she believed her employer was either MacArthur Leisure Limited (with company number SC400617) or MacArthur Wellness Clinic Limited (with company number SC525367).
8. The claimant had never been given a written statement of particulars nor any wage slips. No clarity had been given to her during her employment. All she knew was that the individual she included in the claim form had directed her throughout her work. Having researched the matter she believed that her employer could well be those set out at paragraph 7.
9. I decided that I would order the claim form and this note to be served upon both entities and allow said companies 28 days to lodge a response if so advised.
10. In terms of rule 34 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal is empowered to add any party to the proceedings where there are issues between that body party

and the claimant, the issues fall within the Tribunal's jurisdiction and it is in the interests of justice to have these issues determined. From the information presented by the claimant to the Tribunal it is in the interests of justice to add these parties to the proceedings. Either entity could be the claimant's employer: only they would be able to confirm the position by reference to evidence. Those bodies would also receive a copy of this note (in addition to the claim form) and they could provide their response to the claims, including whether they accept whether they are the claimant's employer (and why).

### **Claims being advanced**

11. In relation to the claims being made by the claimant she explained that there were 6.
12. Firstly she claimed a payment of £126,88 being wages for 14.5 hours worked from Tuesday 2 to Friday 5 October 2018 which she had worked but payment had not been made.
13. Secondly she claimed 45.5 hours' worth of holiday pay. The business manager of her employer (Ms Glasgow) had advised the claimant that upon checking with their accountant, who managed payroll, the claimant was due to be paid for 45.5 hours' worth of holidays. That was in respect of holidays taken between 13 March 2018 and 8 October 2018. She had taken holidays and been told that she would be paid, but payment had not been made.
14. Thirdly the claimant believed that she may be due a payment in respect of outstanding accrued holidays due to her as at the termination of her employment. The claimant would determine what she believed she was due and why and send this information to the Tribunal and the other respondents;
15. Fourthly the claimant was seeking reimbursement of £73, which was a sum the claimant had paid (with her own money) for work training. She had been told by her employer to go on a course (in respect of "canva" for social media promotional material). That had been exclusively for her employer and she sought reimbursement.

16. Fifthly the claimant sought reimbursement of £750 representing a course that her employer had required the claimant attend (and for which the claimant had used her own money). The claimant was originally at college doing the course (which was being provided without charge) but the claimant's employer asked that she go on a private course to secure the qualification that would allow her to work for her employer. That was something the claimant was to be reimbursed but no payment had been forthcoming.
17. Sixthly in terms of section 24(2) of the Employment Rights Act 1996 an employee is entitled to seek repayment of financial losses sustained as a result of any unlawful deduction of wages. The claimant believes that she may have suffered losses as a result of her employer's failure to make the payments due to her, including potential bank penalties etc. The claimant would provide detail of these losses to the Tribunal and the other respondents.
18. The claimant explained that she would seek advice to ensure that she set out precisely what she believed she was due any why (in light of the foregoing heads of claim). Following receipt of the response forms from the above 2 entitles, a final hearing will be fixed to confirm the identity of the claimant's employer and to deal with the claims arising.

**Employment Judge**

**David Hoey**

**Date of Judgment**

**08 March 2019**

**Entered in register  
and copied to parties**

**11 March 2019**