



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105470/2023

Held on 8 April 2024 by CVP

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Employment Judge N M Hosie

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Miss Maria E Jolly

**Claimant
Represented by:
Mrs Leigh Jolly,
Mother**

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Refresh Coffee Co Ltd

**1st Respondent
No appearance**

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Sue Bowman

**2nd Respondent
No appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

5 (1) The claim under s.23 of the Employment Rights Act 1996 is well-founded and the 1st respondent, Refresh Coffee Co Ltd, shall pay to the claimant the sum of ONE THOUSAND, SEVEN HUNDRED AND SEVENTEEN POUNDS AND TWENTY EIGHT PENCE (£1,717.28), as unlawful deductions from wages.

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(2) The 1st respondent, Refresh Coffee Co Ltd, shall pay to the claimant the sum of FOUR HUNDRED AND THIRTY SEVEN POUNDS AND NINETY TWO PENCE (£437.92), in respect of the 1st respondent's failure to provide the claimant with a written statement of particulars of employment.

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(3) The claim, insofar as directed against the 2nd respondent, Sue Bowman, is dismissed.

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REASONS**Introduction**

1. Miss Maria Jolly, claimed that she was due unpaid wages. Her claim was not defended. Neither respondent had submitted an ET3 response form.

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The Evidence

2. I heard evidence from Miss Jolly. She gave her evidence in a measured, consistent and convincing manner and presented as credible and reliable. She was represented by her mother. Prior to the Hearing, she had submitted copies of a number of relevant documents (“P”).

The Facts

3. Having heard Miss Jolly’s evidence and considered the documentary productions, I was able to make the following findings in fact. Miss Jolly commenced her employment as a Barista at the “Watershed Café on the Canal” in Edinburgh, on 10 April 2023. Her employment ended on 10 August 2023.

Identity of the Claimant’s Employer

4. This was not at all clear. Miss Jolly did not have a written statement of her terms and conditions of employment. She only dealt with the 2nd respondent, Sue Bowman, and she refused to disclose the identity of Miss Jolly’s employer. On 7 April 2023, Ms Bowman sent an email to the claimant from a “Refresh Coffee” email address, to offer her employment (P1), which Miss Jolly accepted. She started work on 10 April 2023.

5. Payment of her wages was sporadic. However, her bank account statement revealed that the payments were made by “REF LTD T/AS L” (P2) which appeared to be by the 1st respondent, Refresh Coffee Co Ltd.

6. A search in Companies House also revealed that the 2nd respondent, Susan Bowman, is a Director of Refresh Coffee Co Ltd.

7. While the evidence was scant, I was persuaded, on balance, that Miss Jolly was employed by Refresh Coffee Co Ltd.

8. It follows that, despite her intransigence and failure to engage in the Tribunal process, the claim against Ms Bowman will have to be dismissed.

Unpaid Wages

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9. Helpfully, I was provided with a copy of Miss Jolly's "formal grievance", dated 15 August 2023, with a detailed calculation of Miss Jolly's outstanding wages (P3/4).

- 10 10. The total sum due is **£1,717.28**. I accepted Miss Jolly's evidence that Ms Bowman had accepted that this sum was due to her. However, for whatever reason, Ms Bowman was reluctant to disclose the identity of Miss Jolly's employer until eventually she claimed that it was a "K McNeill" and gave an address for that person in Galashiels. Other than Ms Bowman's
15 assertion I had no other evidence to support this contention.

11. Accordingly, I am satisfied that there was an unlawful deduction from Miss Jolly's wages of that sum by the 1st. respondent, Refresh Coffee Co Ltd.

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Written Statement of Employment Particulars

12. Miss Jolly was not provided with a written statement of particulars of employment as she should have been, in terms of s.1 of the Employment
25 Rights Act 1996.

13. Tribunals, *must* award compensation to an employee where upon a successful claim being made under any of the Tribunal jurisdictions listed in Schedule 5 of the Employment Act 2002, it becomes evident that the
30 employer was in breach of his duty to provide full and accurate written particulars. Miss Jolly's successful claim for unlawful deductions of wages is listed in Schedule 5.

Amount of Award

14. A Tribunal *must* award a “minimum amount” of two weeks’ pay in respect of this failure, in addition to the other award.

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15. Miss Jolly’s average weekly earnings, for the 12 weeks prior to termination of her employment, was £218.96. Accordingly, she is also entitled to a payment of **£437.92** (£218.96 x 2), in this regard.

10 **First Respondent’s Insolvency**

16. As I understand it, Miss Jolly is likely to make a claim for payment of the sums due to her to the Insolvency Service, the following facts may be relevant. The respondent Company has failed to defend the claim. It has failed (or is unable) to pay the wages admittedly due to Miss Jolly. A search in Companies House reveals that there is an “active proposal to strike off” the Company. Miss Jolly gave evidence that the Company’s registered office at 146-150 Cowgate, Edinburgh, EH1 1RP does not appear to be active. It does appear, therefore, that the Company is likely to be insolvent. I had no evidence to suggest otherwise.

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Employment Judge: N Hosie
Date of Judgment: 12 April 2024
Entered in register: 15 April 2024
and copied to parties

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