

## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

Case No: 4100214/2017 Held at Glasgow on 18 September 2017

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Employment Judge Shona MacLean

JT & M Crowther

Claimant  
Represented by:  
Mr R Turnbull  
Solicitor

The Scottish Ministers

Respondent  
Represented by  
Ms K McGarrity  
Solicitor

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

The judgment of the Employment Tribunal is that the enforcement notices under the Agricultural Wages Act (Scotland) 1949 dated 10 January 2017 served on John Thornton Crowther, Mary Crowther, Mark Crowther and JT & M Crowther & Son Ltd on 12 January 2017; and the penalty notices dated 10 February 2017 served on John Thornton Crowther, Mary Crowther, Mark Crowther and JT & M Crowther & Son Ltd on 10 February 2017 are rescinded.

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### **REASONS**

1. On 12 January 2017 the respondent served enforcement notices dated 10 January 2017 on John Thornton Crowther, Mary Crowther, Mark Crowther and JT & M Crowther & Son Ltd under the Agricultural Wages Act (Scotland) 1949 (the 1949 Act).

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

2. On 10 February 2017 the respondent served penalty notices dated 10 February 2017 on John Thornton Crowther, Mary Crowther, Mark Crowther and JT & M Crowther & Son Ltd under the 1949 Act.

5 3. At a preliminary hearing on 13 April 2017 the claimant's representative said that no company existed under the name of JT & M Crowther & Son Ltd and that it was a partnership. After an investigation the respondent concluded that the enforcement and penalty notices addressed to JT & M Crowther & Son Ltd could not be relied upon as the legal entity does not exist. The  
10 enforcement and penalty notices served on John Thornton Crowther, Mary Crowther and Mark Crowther were addressed to the individual at JT & M Crowther and Son Ltd. The penalty notices also refer to JT & M Crowther & Son Ltd in the body of the notices. The respondent considered that these notices could not be relied upon.

15 4. The respondent maintains that while the enforcement and penalty notices could not be relied upon due to JT & M Crowther & Son being wrongly characterised as a limited company, the sums specified in the notices remain due. Accordingly the respondent has served fresh enforcement  
20 notices.

5. For these reasons the respondent is no longer defending this appeal and will not be relying on the enforcement and penalty notices that formed the subject matter of the appeal.

25 6. The claimant's representative submitted that the appeal against the service of the notices should be allowed and therefore the notices should be rescinded. This was primarily on the grounds that the notices were invalid as the employer's name is incorrect. It is still disputed at any sums were due  
30 to the worker.

7. The grounds on which a Tribunal can rescind enforcement or penalty notices are outlined in sections 19 and 22 of the National Minimum Wage Act 1998 as applied by section 3A of the 1949 Act.

5 8. The Tribunal considered that the respondent was no longer defending the appeal; the parties agreed that it was appropriate for the notices to be rescinded as they can not be relied upon; and had the officer been aware that JT & M Crowther & Son Ltd was not a legal entity they would not have issued the notices in the terms they did. Accordingly the Tribunal decided to  
10 rescind the notices as requested.

15 Employment Judge: Shona MacLean  
Date of Judgment: 18 September 2017  
Entered in register: 20 September 2017  
and copied to parties  
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