



SHERIFF APPEAL COURT

**[2025] SAC (Civ) 36
GLW-A909-23**

Sheriff Principal A Y Anwar KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in the appeal in the cause

ASHTON PROPERTIES (GLASGOW) LIMITED

Pursuer and Respondent

against

UNITE THE UNION

Defender and Appellant

Pursuer and Respondent: Campbell, advocate; Mellicks Solicitors

Defender and Appellant: McBrearty KC; LC Kennedy, advocate; Allan McDougall Solicitors

9 October 2025

Introduction

[1] This appeal is concerned with whether tweets published by the appellant were defamatory of the respondent.

Background

[2] For the purposes of the appeal, the parties helpfully agreed the following matters.

[3] The respondent owns and operates a restaurant and bar named “Brel” in Glasgow. Between August 2021 and April 2023, the respondent paid its employees working at Brel (“Brel employees”) the Real Living Wage being £9.50 and subsequently £9.90 per hour. During that period, around 60% of Brel employees were under the age of 23. Brel employees did not have a contractual or statutory entitlement to be paid the Real Living Wage.

[4] The Real Living Wage Foundation is a charitable organisation which calculates the hourly rate for the Real Living Wage. With effect from 1 April 2023, the Foundation increased the Real Living Wage to £10.90 per hour. In March 2023, the respondent advised Brel employees that they would no longer receive the Real Living Wage. The respondent explained that it did not consider it financially viable to increase the salaries of all staff to £10.90 per hour at that time. Instead, it increased the hourly rate paid to all staff from £9.90 per hour to £10.42 per hour in line with the National Living Wage.

[5] At the time, the National Living Wage was a statutory minimum hourly wage for those over the age of 23. For those below the age of 23, the statutory National Minimum Wage applied. In April 2023, the National Minimum Wage was £5.82 for those under the age of 18, £7.49 for those between the ages of 18 and 20, and £10.18 for those aged 21-22.

[6] The respondent advised Brel employees that they would all be paid the National Living Wage including those under the age of 23. The hourly rate of £10.42 represented a pay increase for all staff employed by the respondent at Brel as at 1 April 2023.

[7] The respondent also introduced a new tipping scheme to supplement wages. In March 2023, it informed Brel employees that under the new scheme, tips had doubled to an average of £2 per hour for each employee and were expected to increase to at least £3 per hour in peak trading periods.

[8] The Brel employees wished their pay increased to £10.90 per hour in line with the increase to the Real Living Wage. They submitted a formal and collective grievance to the respondent. They were assisted by the appellant's employee, Mr Simpson, in the dispute which followed. The Brel employees' complaint was not upheld. That decision was appealed. Prior to the outcome of the appeal, the appellant published the following tweet on X (formerly Twitter), Instagram and Facebook on 27 June 2023 ("the first tweet"):

"BREAKING

Workers at Brel in Glasgow have been told that they will no longer be paid the real living wage and will be reduced to the minimum wage. Our reps shall be meeting @itisoncom tomorrow to appeal. The parent company made £5.5m in 2021 (most recent figures)."

[9] On the same day, the first tweet was reposted by Mr Simpson, with the following message ("the second tweet"):

"This company makes millions from the hard work of our members who've been told they're just not worth that extra 48p. Tomorrow is the last chance for @itisoncom to overturn this heartless decision and invest some of their profit into the people who created it."

[10] The respondent seeks damages from the appellant and contends that these tweets were defamatory in nature; the ordinary reader of both the first and second tweet would read them to mean that the wages of workers at Brel were being reduced and that was occurring in the context of the parent company of the worker's employer recently making an annual profit of £5.5m.

The sheriff's decision

[11] At the diet of debate before the sheriff, submissions were focussed primarily on the relevancy of the respondent's averments concerning the meaning ascribed to the first and second tweets. Having considered the applicable legal principles (which were not in

dispute), the sheriff found that the ordinary, reasonable Twitter user would understand the tweets to mean that the Brel worker's wages were being reduced, that they were to be paid less; that they were to get a pay cut. He explained that in arriving at the conclusion, he took account of the three key features of the Tweets. Firstly, the ordinary natural meaning of the word "reduced" is to make something smaller or less in amount; secondly, he noted the absence of any reference to a wage scale and noted that the word "reduced" appeared in close proximity to the word "wage" conveying the impression that it was the wage to be paid which was being reduced; and thirdly, while it might be a matter of ordinary general knowledge that Parliament had legislated for an obligatory "minimum hourly wage" and that the "real living wage" was non-binding and more generous than the statutory minimum wage, he would not impute to the ordinary reasonable social media user detailed knowledge of the precise hourly rates prevailing from time to time. The second tweet bore the same meaning as the first tweet. The ordinary reasonable social media user would have understood the second tweet to mean that the worker's wages were being cut (reduced) by 48p per hour.

[12] The sheriff sustained the appellant's preliminary plea in part, limited to the extent of deleting those averments the parties had agreed ought to be deleted and assigned a hearing to determine further procedure.

Grounds of appeal

[13] The appellant contends that the sheriff ought to have sustained the appellant's preliminary plea in full and dismissed the action. The sheriff had erred in his approach to the meaning of the tweets; ordinary readers of the tweets would have understood them

to mean that the wages of the Brel employees were being reduced from one wage scale to another wage scale.

Submissions

Submissions for the appellant

[14] The appellant submitted that the ordinary meaning of the tweets was that the Brel employees had been told by the respondent that their wages would be reduced from one wage scale to a lower wage scale. The tweets were silent as to the effect this change would have on their actual hourly pay. As it happened, the change in scale coincided with the date on which both scales were increased which resulted in a modest increase in the hourly pay. The first tweet was neutral as to the effect the reduction in scale would have on the hourly rate which would depend upon whether the change in scale coincided with the annual review of the wage scales.

[15] The dicta in *Stocker v Stocker* 2020 AC 593 required to be applied carefully. The sheriff had erred in law by taking too impressionistic an approach and by attributing to the words used a meaning which they could not bear. *Stocker v Stocker* did not permit the court to ignore the words actually used. The meaning the sheriff had attributed to the words used involved a reader selecting “one bad meaning” where other meanings are available (*MacLeod, v Newsquest (Sunday Herald) Ltd* 2007 SCLR 555) para [14]).

[16] The sheriff accepted that it would be within the knowledge of an ordinary reasonable social media user that Parliament had legislated for an obligatory minimum hourly rate of pay and that the real living wage is a recommended minimum hourly wage which is more generous than the statutory minimum wage. In that context, the relevant question was what did the words convey to the ordinary reasonable social media user? In relation to the first

tweet, the sheriff had erroneously relied on the use of the word “reduced” to support his conclusion. That word did not convey what was to be reduced. The word “reduced” appeared between references to two pay scales. The tweet did not state that the Brel employees were to receive a pay cut; that is a matter of inference. The sheriff had relied upon the word “wage” which appeared twice in the first tweet, however that word appeared only within the phrases “national living wage” and “minimum wage” which are pay scales the sheriff accepted would be familiar to ordinary readers. The absence of the words “wage scale” did not support the sheriff’s conclusion. It would have been clear to the reader that one pay scale was less generous than another. In real terms, there was to be a reduction in hourly pay. The second tweet bore the same meaning as the first.

[17] As the sheriff had erred in law, this court was able to consider the meaning of the tweets afresh (*Stocker v Stocker*, at para [59]).

Submissions for the respondent

[18] The respondent submitted that the sheriff had not erred. Social media has been recognised by the courts as a causal medium, which is pre-eminently one in which the reader reads and passes on (*Stocker v Stocker* at paras [39] to [43]). The appellant sought an over-elaborate analysis of the tweets to justify its contended meaning. The clear impression conveyed by the tweets was that the Brel employees were having their pay reduced. The tweets did not convey that only a wage scale was being reduced, but that the wages themselves were being increased. The reader would require knowledge of the rate of pay under both scales and the dates on which the rates changed for the appellant’s contended meaning to be the correct one. Even if a reader understood that the employees were moving

from one scale to another, they would understand the tweet to mean that hourly pay was being reduced.

[19] The sheriff had been correct to “put himself into the shoes” of a social media user. He was correct to identify the word “reduced” as a key feature of the first tweet. The use of that word with reference to the wages of the Brel employees was of importance and carried a clear implication that wages were being reduced. The second tweet quantified the reduction. The words “the parent company made £5.5m in 2021” would be understood by the reasonable reader to mean that the respondent’s parent company had recently made a profit of £5.5m. It had not. The appellant contended that “made £5.5m” would be understood to be a reference to turnover, however turnover would be of no relevance to whether the respondent could afford to pay a higher hourly rate to its employees. The whole impression of the tweets was that the Brel employees’ wages were being reduced in circumstances where the parent company was recently very profitable.

[20] Even if this court might have interpreted the tweets differently, if this court can be satisfied that the sheriff did not err in law and he has adequately explained his reasons, the appellate court should exercise disciplined restraint and be slow to interfere with the sheriff’s decision (*Stocker*, at para [58]). The respondent invited the court to refuse the appeal and adhere to the sheriff’s interlocutor.

Decision

[21] The parties were in agreement that if the tweets did not have the meaning attributed to them by the respondent, the action fell to be dismissed. Conversely, the appellant conceded that if the tweets bore the meaning the respondent contended for, they were defamatory of the respondent (in terms of section 1(4) of the Defamation and Malicious

Publication (Scotland) Act 2021). Accordingly, it was not necessary for the sheriff to consider whether the meaning of the tweets was defamatory. The question before the sheriff was more narrowly focussed: what would the words used in the tweets convey to the ordinary reasonable reader?

[22] Neither party challenged the sheriff's careful and thorough analysis of the law. For the purposes of this appeal, it was not disputed that in carrying out its task, the court should:

- (a) give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the material once (*Gillick v British Broadcasting Corporation* [1996] EMLR 267 per Neil LJ at pp 272-273; *MacLeod v Newsquest (Sunday Herald) Ltd* 2007 SCLR 555);
- (b) focus on the "reasonable, natural or necessary" interpretation of the words (*Russell v Stubbs* 1913 SC (HL) 14 per Lord Shaw of Dunfermline at p 23);
- (c) be cautious of an over-elaborate analysis of the material in issue (*Gillick v British Broadcasting Corporation*; *MacLeod v Newsquest (Sunday Herald) Ltd*; *Cayzer v Times Newspaper Ltd* 2015 SLT 501);
- (d) not be too literal in its approach (*MacLeod v Newsquest (Sunday Herald)*);
- (e) consider the hypothetical reader to be a person who would read the publication and react to it in a way that reflected the context and circumstances in which it was made; the way in which the words are presented is relevant to the interpretation of their meaning (*Stocker v Stocker* per Lord Kerr of Tonaghmore at para [39]);

(f) regard the hypothetical reader as neither naïve nor unduly suspicious

(*Gillick v British Broadcasting Corporation; MacLeod v Newsquest (Sunday Herald) Ltd*);

(g) when deciding how a Facebook post or tweet would be interpreted

by a social media user, keep in mind the way in which such postings and tweets are made and read. It would be wrong to engage in an elaborate analysis of a 140 character tweet. It is unwise to parse a theoretical or logically deducible meaning. The imperative is to ascertain how a typical (ie ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and it is pre-eminently one in which the reader reads and passes on. The reader does not pause and reflect. Their reaction to the post is impressionistic and fleeting. But the impressionistic approach must take account of the whole tweet and the context in which it is made; that context includes matters of ordinary general knowledge (*Stocker v Stocker* per Lord Kerr of Tonaghmore at [43] approving *Monroe v Hopkins* [2017] 4 WLR 68).

[23] The court is also entitled to have regard to the impression the material made on it (*MacLeod v Newsquest; Cayzer v Times Newspaper Ltd*).

[24] In his application of these principles, I am not persuaded that the sheriff erred; he was correct to conclude that the meaning conveyed by both tweets to the ordinary reasonable user of X (Twitter) is that the Brel employees' wages were being reduced. They were to be paid less. They were to receive a pay cut. That was the effect upon them of a change of pay scale. That was certainly my impression of the words used.

[25] On behalf of the appellant it was submitted that the sheriff had taken an overly impressionistic approach at the expense of a careful consideration of the word actually used. I do not agree that is so. He had particular regard to the language used, including the word “reduced” and the references to the two pay scales. He was correct to attach significant weight to the words “reduced” and “wages” (albeit the word “wages” appeared in reference to pay scales) which were apt to convey to the ordinary reasonable reader that the Brel employees were to receive a reduction in pay. It was submitted that the word “reduced” did not convey what had been reduced and was neutral as to whether the reduction was in the hourly rate of pay on any particular day or the scale of wages to be applied. In my judgment, in either event, the ordinary reasonable reader would read the first tweet to mean that the Brel employees were to receive a pay cut.

[26] The sheriff accepted that the context in which the ordinary reasonable reader would read the tweets included matters of general knowledge such as (a) that Parliament had legislated for an obligatory minimum hourly wage to be paid to employees depending upon their age and (b) that the Real Living Wage is a recommended minimum hourly wage which is more generous than the statutory minimum wage. He was correct to conclude that beyond that general understanding, more detailed knowledge could not be imputed to the ordinary reasonable reader. In particular, he was correct to conclude that such a reader would not be aware of the precise hourly rates prevailing at the relevant time. Nor would such a reader be aware of the precise dates on which these rates are ordinarily changed. Accordingly, the ordinary reasonable reader would not be in a position to readily understand that the timing of a change of pay scale might in fact lead to an increase in the hourly rate paid. He or she would understand that the Brel employees were not simply

changing from one pay scale to another but that the effect of that change was a reduction in the hourly rate of pay.

[27] The meaning contended for by the appellant is the product of a strained analysis. It would require the reader to pause and to contemplate the rate of pay prescribed by the two wage scales referred to, be aware of when these scales changed and then consider whether the effect of a change of pay scale was to increase or reduce the hourly rate of pay for the Brel employees. Readers of tweets do not generally pause and reflect nor ponder on what meaning a statement might possibly bear (per Nicklin J in *Monir v Wood* [2018] EWHC 3525 (QB) at para [90] cited with approval in *Stocker v Stocker*). Readers of social media posts “do not subject them to close analysis. They do not have someone by their side pointing out the possible meanings that might, theoretically, be given to the post” (per Lord Kerr of Tonaghmore, *Stocker*, at para [47]).

[28] The second tweet reproduced the first tweet. They have the same meaning. The sheriff was correct to conclude that the ordinary reasonable reader would have understood the reference to “that extra 48p” as a quantification of the reduction in the hourly rate of pay for the Brel employees.

[29] For completeness, I note that the first tweet refers to the “minimum wage” rather than the “National Living Wage”. Neither party attached any significance to that reference.

[30] For the reasons set out above, I shall refuse the appeal, adhere to the sheriff’s interlocutor of 27 September 2024 and remit to the sheriff to proceed as accords. It was agreed that expenses should follow success. I shall grant the expense in favour of the respondent and certify the cause as suitable for the employment of junior counsel.