



EMPLOYMENT TRIBUNALS

Claimant: Mr P Kryg

Respondents: (R1) Baildon Construction and Maintenance Limited
(In Liquidation)
(R2) Charlestown Student Properties Limited
(R3) Mr John Cooper

Heard at: Nottingham **On:** Thursday 23 February 2017

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondents: (R1) No Appearance
(R2) Mr J Cooper, Managing Director
(R3) In Person

JUDGMENT

The Employment Judge gave judgment as follows:-

1. The Claimant was employed by the first Respondent and the claim against the second Respondent is dismissed.
2. The claim of race discrimination against the third Respondent is struck out as having no reasonable prospect of success.
3. The proceedings against the first Respondent are stayed.
4. The deposit order I made at the hearing on 18 July 2016 should be refunded to the Claimant.

REASONS

Background and Issues

1. The Claimant presented his claim to the Tribunal on 21 March 2016. In his claim he had said that he had been employed by the first Respondents as a builder/joiner from 13 November 2013 until his dismissal. He said that his dismissal had taken place on 15 January 2016. His complaints were of:-

- Unfair dismissal
- Race discrimination

- Notice pay
- Wages

2. He said that he had received unfavourable treatment because of his race which he described as being Polish. The acts complained of was that he was required to provide his own vehicle and that he had been bullied and harassed by Neil Beaumont, another employee.

3. On 6 May 2016 the first Respondent's filed their ET3. They denied the allegations made by the Claimant. A Preliminary Hearing was convened for 9 June 2016 which was conducted by my colleague Employment Judge Solomons.

4. At that hearing the Claimant was unrepresented and did not have the benefit of an interpreter. Prior to that hearing he had sent an agenda in which he had indicated that he wished to join Charlestown Student Properties Limited into the action. Still no mention was made of any claim against Mr Cooper personally.

5. It can be seen from the note of the hearing from Employment Judge Solomons that they discussed the application by the Claimant to add a Respondent. Judge Solomons records:

"After discussion he accepted that this company was not his employer and he did not proceed with the application to add a Respondent. It is accepted that the current Respondent was the employer."

6. Judge Solomons decided that there should be a further Preliminary Hearing which would consider amongst other things whether the claim should be struck out or whether a deposit order should be made on the grounds that the Claimant had little reasonable prospect of success.

7. On 18 July 2016 I conducted that hearing. Whilst I did not strike the claim out, I did consider that all the complaints that he made had little reasonable prospect of success and I ordered the Claimant to pay a deposit of £500.

8. On 10 August 2016 Mr Kryg paid his £500 deposit. The matter was not referred to me until 9 November and a further Preliminary Hearing was then convened.

9. Shortly before the hearing on 30 November, Mr Cooper wrote to the Tribunal to say:

"Please note that the Respondent in the above case is insolvent. The company has gone into liquidation and the company affairs are being managed by Simon Smith of Kingsbridge Corporate Solutions."

10. On the same day we also received a letter from Martin Smith, administrator of Kingsbridge Corporate Solutions. He informed the Tribunal the company had ceased trading on 25 November 2016 and would enter into Creditors Voluntary Liquidation on 22 December 2016. The company is I understand, now in liquidation.

11. At the Preliminary Hearing on the application of Mr Kryg I joined the second and third Respondents in these proceedings as Mr Kryg was now renewing his allegation that he was also employed by Charlestown Student Properties Limited and he also believed Mr Cooper was personally liable for the discrimination that he suffered.

12. Upon serving the second and third Respondents with the claim we received an ET3 from each of them and on 1 February 2017 the Tribunal wrote to the parties to inform them that there would be a Preliminary Hearing to determine whether the claims against the second and third Respondents should be dismissed. In particular I was to determine whether the Claimant was employed by Charlestown Student Properties Limited.

The Hearing Today

13. I heard evidence from both Mr Cooper and the Claimant and the Claimant also produced to me a bundle of documents in support of his contentions that he was employed by Charlestown Student Properties Limited. Where there was a dispute in the evidence I preferred the evidence of Mr Cooper. The reason for that is that he has always been consistent in his evidence both to the Tribunal and in his pleadings. Mr Kryg has changed his mind about who his employer was on a number of occasions. Initially he said it was the first Respondent's, then before Judge Solomons he considered adding the second Respondent's but then decided not to and then when he found that the first Respondent's had gone into administration, resurrected his argument that he was employed by the second Respondent.

Facts

14. The Claimant commenced his employment on 13 November 2013 as a builder/joiner. I am satisfied that that employment was with the first Respondent's.

15. Having heard evidence from Mr Cooper I am satisfied that Baildon Construction and Maintenance Limited did what the name suggests, ie constructed properties and maintained them. In the Lincoln area this work was undertaken for landlords who had bought buy to let properties and owned the same and wanted to rent these properties out to students. I am satisfied the work was always undertaken for the landlords and not for the second Respondent. The work was paid for direct by those landlords to Baildon Construction.

16. Mr Kryg was a builder and joiner who carried out this work. Whilst he did not have a contract of employment, I have seen the payslips which clearly show that he was paid by the first Respondent. I have also seen his P45 and again this shows that his employer was the first Respondent. I also take into account that when he filed his ET1 originally he said that he was employed by the first Respondent and then when he had the discussion with Employment Judge Solomons at the Preliminary Hearing he again said and accepted that he was employed by the first Respondent.

17. The only work that he did which was not building work was for a few days each year which he spent showing students around properties. In 2015 this comprised 15 days. When he did this work he was still employed by Baildon Construction and Baildon invoiced the second Respondent for this work.

18. The first and second Respondents whilst in the same ownership are clearly 2 separate companies and have separate offices. The first Respondent had offices in Baildon, Yorkshire and the second Respondent had offices in Lincoln. They undertook entirely separate activities. The second Respondent managed and let properties and the first Respondent undertook construction, renovation and maintenance of properties.

My conclusions

19. I am satisfied that there is no evidence at all that the Claimant was ever employed by the second Respondent.

20. In respect of his claim against Mr Cooper the allegations are set out at page 1 of the bundle that the Claimant produced to me. His complaints against Mr Cooper relate to the period between 18 November 2015 and 17 December 2015. He says that he was bullied, harassed and mocked by Mr Cooper. I am satisfied that he has never before complained to the Tribunal about the behaviour of Mr Cooper in this way.

21. I explained to Mr Kryg that complaints of racial discrimination have to be made within 3 months of the date of the act complained of and that I can only hear claims outside that time if I am satisfied that it would be just and equitable to allow the Claimant to do so.

22. I am satisfied in this case that the claims of discrimination against Mr Cooper are not only extremely weak but are also well out of time and I cannot see that there is any possibility in this case that I would accept that it would be just and equitable to allow the claim of discrimination to proceed after such a delay. In this case the claim was presented on 21 March 2016 and it is not until almost 9 months later on 2 December 2016 that the Claimant sought to make Mr Cooper a party to these proceedings. That claim should be struck out as having no reasonable prospect of success.

23. That leaves his claims against the first Respondent who are now in liquidation. There seems little or no prospect of the Claimant recovering anything from the liquidator of the first Respondent. I therefore stay the proceedings in respect of those against the first Respondent. If the Claimant wishes to proceed and thus pay a hearing fee which he is unlikely to recover from the liquidators he can make an application to the Tribunal. Otherwise I will reconsider the claim in 6 months and I may then ask him to give reasons why his claim should be not struck out for not being actively pursued.

Deposit

24. As the deposit order was made in respect of the first Respondent's case and bearing in mind the position in respect of that and the company being in voluntary liquidation, the Claimant should be reimbursed in respect of his deposit order.

Employment Judge Hutchinson

Date 21 March 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE