



EMPLOYMENT TRIBUNALS

Claimant

Mrs T. Kandeepan

v

Respondent

- (1) Ameen Rashied, trading as
Rush Forecourt Services
- (2) Parkways Management
Consultants Ltd

PRELIMINARY HEARING

Heard at: London Central

On: 13 March 2017

Before: Employment Judge Goodman

Appearances

For the Claimant: Ms. Sanghera, solicitor

For the First Respondent: in person

JUDGMENT

1. The judgment sent to the parties on 24 November is revoked.
2. Parkways Management Consultants Management Consultants Ltd is added as second respondent to the claim.
3. The First Respondent's time to respond to the claim on form ET3 is extended to 10 April 2017.

REASONS

1 the claimant presented a claim to the employment tribunal on 9 June 2016, naming first respondent as her employer. It was listed for preliminary hearing on 22 November.

2 The first respondent did not respond to the claim, nor did he attend the hearing. On 26 October 2016 he wrote to the tribunal stating that in March the business had been taken over by Parkways Management Consultants Ltd.

3 at the hearing the claimant by has versus explained that she was due to return to work following maternity leave on 1 February 2016 but had no response from yours first respondent until 22 February she was told in a telephone call that she was dismissed. On these facts the Tribunal considered that if there was a transfer of an undertaking it had not taken place until after the claimant's dismissal. Just was entered

against the first respondent and an award of £6006.65 was made for unfair dismissal notice pay, compensatory award, maternity pay outstanding at dismissal and injury to feelings, with a 25% uplift of aim to comply with the ACAS code on discipline and grievance, and an order for reimbursement of a £250 fee.

4 On 9 December the first Respondent wrote seeking reconsideration saying he was undergoing medical treatment, he was unaware who supposed to attend as the business was already taken over, that the claimant had falsified statements as should not be dismissed taking maternity leave, she did not respond to calls or letters.

5 The hearing was listed for reconsideration and the first respondent was ordered to provide information before the hearing: a response on form ET3, medical evidence about the treatment preventing his attendance, an explanation why did not tell the tribunal he would not attend the hearing, a request for extension of time to file a response, was explanation why he had not requested it before 3 November. The first respondent did not do any of these things.

6 The first respondent did telephone the tribunal on 2 February to say that instead of contacting him at ameen9@hotmail.co.uk, correspondence should be sent to parkways@mail.com.

7 Today the Respondent said he had not attended the hearing on 22 November because he considered there had already been a transfer of the business to the second respondent. He did not produce any documents about this. His answers to questions about whether he had informed the second respondent of proceedings were unclear but it seems that their view is that until they are named they should not be involved. He produced two letters dated 14 January 2017 purporting to come from the second respondent and addressed to the claimant's solicitors, who say they have received neither letter. The letters are in identical terms save that one gives the telephone number and email address and the other does not. Both are signed, although they are said to be the file copies; the signature resembles that of the first respondent. The letter (to the claimant's solicitor) says "we can confirm we took over your (sic) business on February 2016".

8 On his health, the first respondent said he suffered from a condition, whose name he did not know, which caused a tremor in the right hand. He had been prescribed tablets, which he did not take, and whose name was unknown to him, together with rest. I observed that the tremor was very occasional, that it was only in the right hand, and only when the first respondent believed he was being observed. I concluded that this was not the reason for failing to attend the earlier hearing.

9 The first respondent continues to work in the business at Boston Road, at least until March 2017. The first respondent says the business is now one of several filling stations operated by the second respondent.

10 In many respects the representations made by the first respondent were evasive and unsatisfactory. I add that he stated this morning that he does check the hotmail address, and had done so this morning, though he had not observed the unless order sent there last week. The parkways email he provided on 2 February is that of the second respondent, now his employer. The claimant produced the first respondent's letter, with franked envelope, inviting her to a meeting in September 2015 about a

transfer, though the identity of the putative transferee was not stated, and it had not been posted until the day the meeting was to take place. It was said she had received no other correspondence about a dismissal or a transfer.

11 I adjourned briefly to allow the claimant's solicitor an opportunity to seek instructions from her client, who was present, given the new information, on whether she continued to oppose the application to revoke the judgment, which would otherwise be final. After adjournment she withdrew opposition to the application, though confirming that the claimant believed she had been dismissed by the first respondent, and that any transfer did not occur until after that.

12 In the light of this I concluded it was in the interests of justice to revoke the judgment against the first respondent, add the transferee as second respondent, and list the case for a hearing on the merits. There is no clarity about the date of the transfer and the dates appear close in time. Had the claimant opposed the application, it may well have been decided to refuse consideration on ground that the first respondent has been evasive and uncooperative, but as it is possible the second respondent is liable, despite the first respondent's evasion, and as the claimant wishes to pursue the second respondent in the alternative, it is in the interests of justice that the matter is considered on the documents and oral evidence.

13 As the case is now old, and because there is not substantial additional evidence, and because a two hearing cannot be listed until the end of July, and after that in September, there will not be a preliminary hearing on the transfer issue. Once there has been a response to the claim by both respondents, and disclosure of documents, it is open for any party to apply for a preliminary hearing on the issue.

14 The first respondent gave his home address for service as 90 Alexandra Road, London N8 0LJ.

15 The first respondent said he may travel to India for treatment in the summer, but as yet has made no booking for travel or treatment. He confirmed he is aware of the hearing and the risk he runs if he does not attend it. It was explained that he **must** respond to the claim on ET3, otherwise there may be another default judgment. The addition of the second respondent does not mean there is no claim against him.

Employment Judge Goodman
13 March 2017