



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Patel

Respondent: Leyland Late Night Ltd

HELD AT: Manchester

ON: 26 September 2017

BEFORE: Employment Judge Tom Ryan

REPRESENTATION:

Claimant: Ms J Harrison, Solicitor

Respondent: Mr G Mahmood, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The determination of the issue of the claimant's employment status shall be made at the final hearing.
2. It is recorded that the claimant has agreed to give disclosure of the contents of the email account: leylandlatenightpharmacy@live.co.uk on 5 October 2017 by putting the respondent and its solicitors to examine and take copies of any relevant email.
3. The final hearing presently listed for 10 October 2017 is postponed.
4. It is ordered that the proceedings be stayed until 31 October 2017 because of enquiries concerning matters in issue by other agencies.
5. The parties shall notify the tribunal by 31 October 2017 of their proposals for the further conduct of the proceedings.

REASONS

1. This case was listed for a preliminary hearing to determine the issue of whether the claimant was an employee of the respondent.
2. I adjourned to read the witness statements and the key documents in the case. At the conclusion of that period the respondent applied for a postponement of the

hearing on the ground that further disclosure was needed. Recent disclosure had indicated that the email account described above which had been set up by one of the shareholders and managers potentially contained material documents. Since the password for the account of been changed was not possible for the respondent to access the email account without the consent of that shareholder and manager.

3. The respondent sought a postponement to enable the account to be examined. I indicated that I was prepared to grant the postponement since neither party was aware of the full contents of the email account and to proceed to determine the issue without affording both parties access to the material in that account could cause the tribunal to reach a decision without being possessed of all relevant facts.
4. Although the claimant resisted the application for the postponement he could not advance any persuasive argument.
5. I adjourned the proceedings again to enable the parties to consider how access to the account could be achieved. When they had agreed the process summarised above I considered the question of relisting the hearing. I had by then formed the conclusion that in the interests of saving cost and expediting matters the issue of employment status should be determined at the final hearing. The credibility of the two principal witnesses will be in issue. Even though a three-day hearing will be necessary to deal with all matters I established that a hearing could be listed in the near future.
6. The respondent's counsel informed me that there was an ongoing investigation by the police into the circumstances which respondent alleged were closely connected to the reason for the claimant's dismissal.
7. I therefore canvassed with the parties with the proceedings should be stayed. The respondent suggested that it should be stayed. Ms Harrison's instructions, bearing in mind that she is not representing the claimant save the purposes of these proceedings, was that the case should proceed as soon as possible. In my judgment it would be wrong for the final hearing to take place at a point in time at which the claimant might be inhibited from providing factual evidence lest his position be compromised in potential criminal proceedings. I also considered it inappropriate to fix another hearing now only for the claimant to seek a postponement having received advice from other solicitors.
8. Since the claimant wishes to have this matter resolved as soon as possible I ordered a brief stay of the proceedings so that the claimant could seek appropriate advice before deciding whether to proceed with a further hearing on the tribunal at this stage.

Employment Judge Ryan

Date _____ 26 September 2017 _____

JUDGMENT SENT TO THE PARTIES ON

27 September 2017

FOR THE TRIBUNAL OFFICE