# THE EMPLOYMENT TRIBUNAL

**SITTING AT:** **LONDON SOUTH**

**BEFORE:** **EMPLOYMENT JUDGE MARTIN**

**BETWEEN:** **CP** **Claimant**

**and**

**Mr R**
**Mrs R** **Respondents**

**ON:** **12 December 2017**

## RESERVED JUDGMENT

The judgment of the Tribunal is that the Respondents application to strike out the Claimant's claim is dismissed.

## RESERVED REASONS

1. The Respondents made an application to strike out the Claimant's claim pursuant to Rule 37 (1) (a) Employment Tribunals Rules 2013 following the withdrawal of proceedings against S Limited which was dissolved on 28 February 2017. The basis of the application was set out in a letter sent on 31 August 2017 following a telephone preliminary hearing with Employment Judge Baron on 10 August 2017. At that hearing the parties agreed the Respondents application could be considered on the papers. I had before me the Respondents application and a reply from the Claimant.

2. The Respondents application referred to **Barlow v Stone [2012] IRLR 898, EAT** in which it was held that under the Disability Discrimination Act 1995, it was not necessary for an employee to bring a claim against their employer in order to make a claim against another employee, provided it could be established that the employer would have been vicariously liable for the

discrimination.

3. Barlow v Stone was decided under the Disability Discrimination Act 1995 (the "DDA") which, along with other previous discrimination legislation, has now been repealed and replaced by the Equality Act 2010 (the "EqA"). The Respondents argument is that the provisions in the EqA are materially different to the provisions of the DDA and that an employer must now be a party to the litigation in order that an individual employee can be a party.

4. **S109 EqA** sets out that anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

5. **S110 EqA**

**110 Liability of employers and principals**

(1) A person (A) contravenes this section if –

(a) A is an employee or agent,

(b) A does something which, by virtue of section 109(1) or (2) is treated as having been done by A's employer or principal (as the case may be), and

(c) The doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

6. The Respondents submit that the wording of this section means that the employer must be a party to the litigation by virtue of the word "*and*" at the end of s110(1)(b). They argue that there must be a finding against the employer.

7. The Respondent further argues that this wording has been *'purposefully worded'* and it would not have been the intention of parliament that an employee sues another employee in an Employment Tribunal.

8. The Claimant submits that at the time of the alleged detriments S ltd was active on the register and that the acts done by the Respondents if done in the course of their employment were automatically done by S Ltd. The Claimant does not accept the Respondents interpretation of s110 submitting that the finding that a contravention has occurred is quite different from finding of liability, which does require a viable respondent.

9. I find the wording of the EqA to be clear. I construe the wording of s110 EqA as meaning that A does something for which A's employer is vicariously liable and as such the employer takes the something done as being its own act. Therefore, the wording of s110 (1)(c) reflects this situation and does not mean that there has to be an actual finding against the employer, just that the employer would be vicariously liable for the actions of A.

10. I do not find that it is necessary for a claimant employee to bring a claim against the employer to bring a claim against the individual perpetrator, providing it can be shown that the employer would be vicariously liable for the individuals

actions.

11. The Respondents application is therefore dismissed and the hearing on 21 February 2018 remains as listed.

Employment Judge Martin
Date: 12 December 2017