EMPLOYMENT TRIBUNALS

Claimant: Mr K Kennaugh

Respondents: 1. K-9 Event Waste Management
2. Solfest Festivals

Heard at: Manchester **On:** 22 November 2018

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: Not in attendance
Respondents: Not in attendance

JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal upon the preliminary issues that:

1. The claimant do, by **14 December 2018** inform the Tribunal in writing as to whether the correct respondent to his claims for unlawful deduction of wages is Jess Ostle trading as K-9 Event Waste Management of 361, Lowedges Crescent, Sheffield, S8 7LL.

2. In the event that the claimant informs the Tribunal that this person is not the correct respondent to his claims, he shall inform the Tribunal of any appropriate alternative respondent , and the claims in respect of unlawful deductions of wages will be re-served upon that person or entity.

3. The Employment Judge proposes, pursuant to rule 37(1)(a) of the 2013 Rules of Procedure:

(1) to strike out the claimant's complaints of unfair dismissal, on the grounds that he lacks qualifying service to present a complaint of “ordinary” unfair dismissal;

(2) to strike out any claim of automatically unfair dismissal pursuant to section 100 of the Employment Rights Act 1996 , on the grounds that such a claim has no reasonable prospects of success; and

(3) to strike out the complaints of religion or belief discrimination on the grounds that those claims too have no reasonable prospect of success; and

unless the claimant do by **14 December 2018**, either by written representations , or by seeking a further hearing , at which he will be required to attend in person to make such representations, show cause as to why those claims should not be struck out.

4. The Tribunal having previously ordered that Solfest Festivals be joined as a respondent, but that not being a legal entity, and no response having been received from the address to which the amended claim was sent, no order is made joining any further respondent. Solfest Festivals is removed as a respondent.

REASONS

1. The Tribunal convened to hold a public preliminary hearing as directed previously by Regional Employment Judge Parkin following a previous preliminary hearing held on 4 September 2018. Neither party attended that hearing, and following further correspondence that ensued after that hearing , this hearing was listed by the Tribunal by notice of preliminary hearing of 1 October 2018 to determine:

- Whether the Tribunal has jurisdiction to consider the claimant's claim alleging unlawful discrimination because of the protected characteristic of religion or belief;

- Whether the Tribunal has jurisdiction to consider the claimant's claim of unfair dismissal against the first respondent in circumstances where he lacks two years' continuous service.

2. The Notice of Hearing also indicated that Case Management Orders may be made at the conclusion of the preliminary hearing.

3. This matter has a chequered procedural history which it is relevant to rehearse in some detail at this stage.

4. The claims made by the claimant go back to August 2013, when he was briefly employed to carry out some casual work relating to the clearance of litter at a festival , Solfest in Cumbria, which was being held at that time. The claimant brought the proceedings originally on or about 11 November 2013. At this time fees were payable in respect of Employment Tribunal claims. At some point, it is unclear precisely when, however, his claims were dismissed by reason of either failure to pay an appropriate Tribunal fee , or to present a valid application for help with fees. Whatever the reason, following the decision of the Supreme Court in ***R (on the application of Unison) v Lord Chancellor [2017 UKSC 51]*** , the claimant in common with many others whose claims had been rejected or dismissed by reason

of non compliance with the fees regime was, by a letter of 12 March 2018, advised of his right to apply for reinstatement of his Employment Tribunal claim, and duly did so. Consequently, on or about 22 March 2018 the claimant did indeed request reinstatement of his claims, and the Tribunal, by a letter of 27 April 2018, acknowledged his request , and proceeded to process his claims.

5. In the claim form, which appears to be that originally presented to the Tribunal in 2013, the claimant has named as the respondent "K-9 Event Waste Management" and has provided as its address 351 Lowedges Crescent, Sheffield, S8 7LL . A telephone number beginning with the numbers 0114 is also provided in the relevant box of his claim form. In terms of where the claimant worked, at box 2.3, he has provided the information of "Solfest, Tarnside Farm, Near Aspatria, Cumbria, CA7 4NQ". No other respondent is named, however, in the claim form. In terms of the claims made, at box 8.1, the claimant has ticked the box for unfair dismissal, and discrimination on the grounds of religion or belief. Further, in the boxes provided the purpose , under the heading "I am owed" , two further boxes had been ticked for arrears of pay and "other payments". At section 8.2 the claimant sets out a narrative of his engagement to work at the Solfest festival , to which the Tribunal will return later in this Judgment.

6. At that stage there was one respondent , identified only as "K-9 Event Waste Management", at an address in Sheffield. Consequently, the proceedings were sent to the named respondent in that format, but no response was received.

7. At the time of issuing of the claims, the Tribunal issued a notice of preliminary hearing, for a case management hearing, scheduled to be held on 20 June 2018 at Manchester. By a letter of the same date, 27 April 2018, the Tribunal also wrote to the claimant on the direction of Regional Employment Judge Parkin, directing him to provide full particulars of his religion or belief discrimination claims to the Tribunal, and to do so by 11 May 2018. The claimant did not reply to that letter by 11 May 2018, and consequently a reminder was sent to him dated 15 May 2018. The address used at this stage was an address in Bangor, North Wales, which was the address that the claimant had provided at box 1.5 of the claim form.

8. The Tribunal's correspondence of 15 May 2018 was sent to the claimant by email, which crossed with an email from the claimant, albeit from a different email address from that provided at box 1.9 of the claim form, in which he asked the Tribunal to correspond with him by email or by fax, and pointed out that he was often not at home. He had not seen the Tribunal's recent correspondence and he also provided a postal address for service , at 182 Longley Avenue West, Sheffield, S5 8UH.

9. By email of 21 May 2018 the claimant did provide the requested particulars of his belief discrimination claims. This was an attachment to his email of that date, in which he says as follows:

> *"It is a tenet of my faith that one should engage in one's tasks as effectively as possible (for example using the right tools), and to do what wants doing rather than the least that needs doing. I believe one should not suffer fools. And I believe in the rule of law.*

After the respondent became aware of my beliefs, the demeanour of the relationship changed. Mainly this was in subtle ways that I cannot remember after this time but as an example, he changed the venue of a pre-shift meeting, without informing me and I suspect he did so in order to have me miss it.

He picked me out for unpleasant duties in preference to other staff who were better qualified and more suitably dressed. The task involved wading in waste deep refuge with heavy loads and I was wearing sandals. Finally, he physically assaulted me and had me removed from the site."

10. In the covering email, the claimant also advised the Tribunal that as the event had been organised by the Solfest company, he did not know the details of the contractual relationship between them and the first respondent, but he claimed that they were responsible for the decision to remove him from the venue and were "complicit in the breach". He went on to give the registered address of that company. He asked if it was possible to add this entity as a second respondent.

11. The Tribunal replied by letter of 4 June 2018 , informing the claimant that his application to add Solfest as a second respondent would be considered at the preliminary hearing scheduled for 20 June 2018. By a further letter of 4 June 2018 the Tribunal did write to Solfest addressing it to Solfest Company at the address provided by the claimant, namely The Old School, Tebay, Penrith, Cumbria, CA10 3TP. Solfest were informed of the claimant's application to join them as a respondent to the proceedings , and it was pointed out that they were entitled to attend or be represented at the preliminary hearing to make any comments or representations upon that proposal. No response was received to that letter.

12. By email of 7 June 2018, the claimant wrote to the Tribunal pointing out that he had not had notice of the case management hearing, nor had he seen any response from the respondent. He also queried why the case was being dealt with at Manchester when Leeds would appear to be more convenient for both parties. The claimant then wrote to the Tribunal on 19 June 2018 pointing out that he had not received any response from the respondent, nor any notification of the preliminary hearing listed for the following day, and consequently he sought a postponement of that hearing. The Tribunal responded the same day by sending him further copies of documents that had been sent to him by post, by attaching them to an email to him of that date. The Tribunal did, on 19 June 2018, postpone the preliminary hearing listed for 20 June 2018. Further, the Tribunal did , in that email of 19 June 2018 explain on the direction of the Regional Employment Judge , why the hearing was listed in Manchester as the Regional Office of the North West region which covered the place of work involved in the proceedings in Cumbria.

13. On 19 June 2018 also, the Tribunal sent a letter to K-9 Event Waste Management at the address provided by the respondent informing the respondent that no response had been entered to the claim , and that as such the respondent was only entitled to participate in any hearing to the extent permitted by the Employment Judge who heard the case. On the same day the Tribunal also sent out a notice to the parties informing them that the preliminary hearing had now been re-listed for 21 August 2018 at Manchester.

14. The claimant sought, and was provided with , a copy of the draft Agenda for use at the forthcoming preliminary hearing. By email of 30 July 2018, however, he wrote to the Tribunal expressing a lack of understanding and a degree of confusion as to why this document had been sent to him. He expressed concern that the hearing was still proceeding in Manchester when he had asked for it to be moved to Leeds. He had heard that there was difficulty with trains to Manchester, and sought a further postponement of the preliminary hearing. He also asked the Tribunal to stop a moment and "take stock". He went on to say this:

> *"Since there has been no word from the respondent, and as far as I can tell this company has ceased trading, it looks at this point to be likely that I will go to a whole lot of trouble to get a judgment, have nobody to serve it on and the whole thing being a waste of time and trouble."*

15. The claimant complained in this email that his claims had not been dealt with within a reasonable time, and that had this not been the case the respondent would still have been trading , and he would not have had the problems he was referring to. He went on to suggest that the first issue to be addressed was whether Solfest should he joined as a second respondent, and if so "whether they were open to negotiating a settlement". The Tribunal replied by a letter of 7 August 2017 on the direction of the Regional Employment Judge to the effect that the preliminary hearing had been listed in Manchester for the reasons given in the previous email of 19 June, and remained listed in person as the Tribunal needed to consider the claims and the issues which arose from them, including whether the proposed new respondent should be joined in the proceedings.

16. The claimant was subsequently informed that any further request for a transfer would be discussed at the preliminary hearing on 21 August 2018, but by further email of 8 August 2018 the claimant invited the Tribunal again to reconsider the refusal, as he saw it, to transfer the proceedings to Leeds. In that email, however, he also sought a postponement of the hearing as he had a hospital appointment.

17. By a letter of 10 August 2018 the Tribunal replied to the claimant, explaining further the reasons why the hearing was proceeding in the Manchester Employment Tribunal. It was reiterated that the application to add Solfest as a respondent would be considered at the case management hearing, but the Regional Employment Judge did grant a further postponement of the hearing , which he considered should still be attended in person if the claimant wished to take part, other than by providing written representations. It was noted that Solfest would have the opportunity to attend and make representations as well.

18. By a further letter of 10 August 2018 the Tribunal sent a further notice of the postponement of the hearing , which was re-listed for 4 September 2018 with a time allocation of two hours. In reply , by email of 13 August 2018 the claimant indicated that he considered the Judge's finding that Manchester remained the most appropriate venue was perverse, and was not consistent with the Tribunal's Rules of Procedure. He invited reconsideration of the refusal to transfer the case to a more convenient location.

19. The Tribunal replied by a letter of 16 August 2018 informing the claimant that the Regional Employment Judge saw no reason to change his decision, and that the

most appropriate venue for any future hearings would be considered at the case management preliminary hearing.

20. The claimant then appealed to the Employment Appeal Tribunal against the ruling of the Regional Employment Judge given on 16 August 2018. His appeal was acknowledged by the EAT on 20 August 2018.

21. The appeal was considered by Her Honour Judge Stacey, under the "sift" provisions of rule 3(7) of the Employment Appeal Tribunal Rules 1993. She dismissed the appeal on the grounds that it disclosed no reasonable grounds for bringing the appeal. This decision was notified to the claimant and the Tribunal by a letter of 22 August 2018.

22. In the meantime the claimant had , on 18 August 2018 , written further to the Employment Tribunal in Manchester replying to the previous correspondence of 16 August 2018. By a letter of 22 August 2018 the claimant then wrote to the Tribunal saying this:

> *"In the absence of a response, can I please apply for a default judgment? What is the procedure?".*

23. The Tribunal wrote back to the claimant by a letter of 28 August 2018, in which it was stated that the Regional Employment Judge saw no grounds to change the decision on venue for the case management hearing which was confirmed in the Tribunal's letter of 16 August 2018. The claimant was told that the case management hearing remained listed for 4 September 2018. The claimant was informed that he could send written representations to the Tribunal in accordance with rule 42 of the 2013 Rules of Procedure. He was informed that Solfest would be copied into correspondence, since it may wish to attend to make representations as to whether the claimant's application to add it to the proceedings should be granted.

24. By email of 27 August 2018 the claimant informed the Tribunal, apologising for not addressing the point sooner, that the proprietor of K-9 Event Waste Management was Mr Jeff Ostle. He made reference, as he had previously, to the questions set out in the Agenda (i.e. the one for the case management hearing), and said that he did not understand how they were not answered in his original claim. He raised what he considered to be outstanding points from his letter of 18 August 2018.

25. By further letter of 30 August 2018 the claimant asked what was the purpose of the "case management" hearing? He said that in the absence of any response there did not appear to be much in need of case management. He said that as none of the points were contested, he could see no grounds why he could not move straight to a judgment, and was not sure why the Tribunal could not do that on the papers. He complained of the delay in replying to his last letter , and pointed out that he did not have time to make written representations in accordance with rule 42 as the Tribunal has not explained the purpose of the hearing. He did not know what representations to make anyway, as the Tribunal had given no reason why the claimant needed to be in Manchester. He went on to say that he could not "justify the damage to Mother Earth". He asked the Tribunal to explain the purpose of either the hearing or the journey, and preferably both. He also asked for advice on the complaints procedure. He went on to make the point that all this aggravation could have been avoided if the Tribunal had actually sent the original notice in good time to

the correct address , and would have been ameliorated if the Tribunal had responded to correspondence more promptly and effectively.

26. By two letters of 3 September 2018 to the claimant the Tribunal advised him of the relevant complaints procedures depending on whether his complaints were administrative or judicial complaints, and also advised the claimant that the purpose of the case management hearing was to identify the nature of his case, issue directions and list the claims for hearing. He was told a further copy of the standard Agenda was attached for his information. The claimant was informed that the preliminary hearing was still taking place the following day i.e. 4 September 2018, and that his queries would be dealt with at that hearing.

27. Shortly after midnight on 3 September 2018, consequently just into 4 September, the claimant sent a further email to the Tribunal. He stated that as the Regional Employment Judge and the EAT had confirmed that his presence was not required and it was a considerable inconvenience to travel to Manchester, particularly at rush hour, and that the case appeared reasonably straightforward, he would "pass" on the invitation to the hearing. He was confident the Tribunal could manage without him. He went on to say this:

> *"The nature of the case is of unpaid wages and compensation for unfair dismissal and unlawful discrimination. Since the employment was for a single event there is no question of reinstatement. The only real difficulty is the question of whether the Solfest company can or should be held accountable. The first question there is of whether they can or cannot be added as a respondent and that question ought to be straightforward."*

28. The claimant went on to say that if he had appreciated that his attendance was unnecessary, then this would have saved a good deal of aggravation and the case might well have been "settled" by now.

29. Consequently, on 4 September 2018 the preliminary hearing was held by Regional Employment Judge Parkin, but there was no attendance by the claimant nor the respondent , or indeed any representation on behalf of Solfest company. Regional Employment Judge Parkin considered the papers, and issued Case Management Orders together with notes of his discussion of the claims which were sent to the parties on 21 September 2018. He issued two orders. The first was that the claimant provide further particulars of his claims, there being two aspects to this order: the first was in relation to the claim of unlawful discrimination relating to the protected characteristic of religion or belief, which required the claimant to set out clearly the unlawful acts alleged and the nature of the belief relied upon. In the second, in relation to the claim of unfair dismissal for an inadmissible reason (the claimant not having two years' continuous service), the claimant was directed to write to both the respondent and to the Tribunal within 14 days of the date of the Order. Further, the Regional Employment Judge did direct that Solfest Festival be joined as a respondent to these proceedings. He directed that the second respondent be served with a notice of the claim , and given the opportunity to present a response which was to be presented within 28 days of the date of the Order being sent to the parties.

30. The Regional Employment Judge went on to list this public preliminary hearing for 22 November 2018 , with a time allocation of one day to determine the two specific issues set out in his Order and referred to above. They were:

(1) Whether the Tribunal has jurisdiction to consider the claimant's claim alleging unlawful discrimination because of the protected characteristic of religion or belief. Subject to any further particulars provided, the belief relied upon by the claimant appears to be a belief in safe and environmental methods of picking up and sorting litter; and

(2) Whether the Tribunal has jurisdiction to consider the claimant's claim of unfair dismissal against the first respondent in circumstances where he lacks two years' continuous service.

31. In the "Discussion" section , the Regional Employment Judge set out a brief history of the claims and indeed noted that the first respondent was apparently a business operated by Mr Jeff Ostle, but that no correspondence had been returned to the Tribunal by the Royal Mail indicating that a notice of claim sent on 27 April 2018 to the address in Sheffield had not been delivered to that address. He also noted that Solfest had not, despite being copied into the correspondence written to the Tribunal to object to being joined, and consequently he did consider it appropriate to join it as a respondent, and allow it to present a response.

32. In relation to the claimant's attendance, at paragraph 5 of the discussion, he noted that the claimant's claim was an unusual one , in that he was alleging unfair dismissal in circumstances which were not clearly within any statutory provision, and postulated the possibility that the claimant was relying upon a protected disclosure (section 103A) or health and safety grounds (section 100) of the Employment Rights Act 1996. Further, at paragraph 6 of the discussion, the Regional Employment Judge made reference to the claimant's religion or belief claims, and observed that presumably the claimant was relying upon section Reg. 10(10)(2) where it is provided that "belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief". He went on to say in paragraph 7 of the discussion that the Tribunal "needs to understand the claims more fully and it is appropriate at the next stage to list the hearing as a preliminary hearing to determine whether the Tribunal has jurisdiction to deal with these religion or belief and unfair dismissal claims". He went on to note that the venue for any final hearing could be considered more fully at the next hearing.

33. A notice of claim was accordingly sent to Solfest Festival, at the Tarnside Farm address previously provided by the claimant in his claim form. This was by a letter dated 1 October 2018. In that notice of claim the second respondent, as it then was, was told that a response needed to be filed with the Tribunal by 29 October 2018.

34. On 1 October 2018 the claimant sent a further email to the Tribunal, having obviously received notification from it as to what had occurred at the preliminary hearing. In this email he asked why the claimant might think that it might not have jurisdiction to hear the claim of discrimination. He went on to say this:

> *"I can see that I may not have explained how the relevant beliefs are part of a philosophical system, but they stem from the founding principles of Born*

> *Again Agnostics, which is that it does not matter if god exists or not, because either way everything is basically down to us now. If you need more detail on that I can go over it with you.*
>
> *With regard to the requirement for two years' service I think that ERA section 108(3c) applies."*

There is then a link to a website at which that section is set out on the Government website. He went on to say:

> *"Please let me know if you need further clarification."*

He then went on to say this:

> *"Can we perhaps consolidate the claims some? It is essentially in two parts: there is the straightforward non payment of wages and there is the unfair dismissal and discrimination, either of which may prove far from straightforward.*
>
> *May I suggest that if Solfest Limited can come to a sensible and early agreement on the settlement of the wages, then I will be prepared to drop the other issues and save us all a lot of trouble. That agreement would need to include a formal and public statement by Solfest Limited to the effect that Mr Ostle is a total and utter tit. We can be flexible about the specific descriptors: I understand he is particularly fond of being called 'Arsehole'. I look forward to hearing from you."*

35. That email was referred to Employment Judge Holmes who directed a reply of 24 October 2018 to inform the claimant that the claims would be considered at the preliminary hearing on 22 November 2018 , and that in the meantime the claimant should desist from making settlement proposals in open correspondence to the Tribunal.

36. In the meantime no response was received from the second respondent.

37. On 4 November 2018 the claimant sent two further emails to the Tribunal. The first one in response to the Tribunal's previous letter was to inform the Employment Judge that his comments were not intended as a settlement proposal, but as a suggestion for case management, based upon his previous experience at the Employment Tribunal. He went on to say this:

> *"While that case progression was the consequence of abject incompetence by the Employment Judges in question, I see no reason why a similar case handling strategy could not be adopted for practical reasons. In fact, in light of the respondent's defence, I see no reason why the issue of wages could not have been adjudicated upon in the first instance on the papers, perhaps you might ask the Judge to explain?*
>
> *In the meantime do you have any further questions in regard to the issues you will be deciding at the hearing and would you be able to give me any estimate of when I can expect to hear how it went?".*

38. There was a further email from the claimant later that day at 17:08, but this was in relation to the automatic reply that the Tribunal sent out to his email correspondence which does refer to the need to send copy correspondence to other parties. In this email the claimant explained that he did not think it proper to inform the other parties of his prior experience as he did not think the points were relevant to them. He went on to say the Tribunal should forward his email if it considered it to be appropriate.

39. By letter of 5 November 2018, Solfest Festival were written to again at the Tarnside Farm address provided by the claimant in the claim form informing them that the Tribunal had not received a response and that it would only be permitted to participate in any hearing to the extent allowed by the Employment Judge who heard the case. The letter, which was copied to the claimant, pointed out that the case remained listed for a preliminary hearing on 22 November 2018 as there were jurisdictional issues.

40. That then is a synopsis of the history of the claims thus far, which brings the Tribunal to the hearing today. The claimant has sadly not attended, but given the terms of his previous email correspondence and particularly that of 4 November 2018, that is not particularly surprising. It is, however, regrettable. The Employment Judge has accordingly had to consider the file and the representations made thus far, to determine what orders should now be made in relation to the claims that the claimant has before the Tribunal.

Discussion

a) Is the current first respondent the correct one ?

41. The position at present is clearly this: by a claim form re-presented to the Tribunal in March 2018 , and served upon one respondent , with a trading name only, to which no response has been received, the claimant has brought claims of unfair dismissal, arrears of wages and discrimination. Those claims arise out of a brief period of employment at a festival held in the summer of 2013. At section 8.2 of the claim form the claimant provides a narrative of the events in question upon which he relies in respect of his claims. That narrative refers to how his employment came about, which appears to have been by him contacting Mr Jeff Ostle in relation to work at the Solfest Festival. The Tribunal has no information as to how the claimant knew Mr Jeff Ostle, whether the two were previously acquainted, or how it was that the claimant came to be contacting him in relation to this work at all. From what is contained in section 8.2 of the claim form it appears that all arrangements for this period of employment were purely verbal , and there is nothing in writing. It is unclear to the Employment Judge how the address , and indeed the trading style, K-9 Event Waste Management, with the address at Lowedges Crescent, Sheffield, features in the proceedings at all. The Employment Judge notes that the claimant whilst originally giving an address in North Wales has more recently given a Sheffield address , and appears to be located in the Sheffield area, where it appears Mr Jeff Ostle was , and maybe still is, also located. Whether the two were known to each other or not is unclear, and quite how the style of K-9 Event Waste Management comes into the proceedings again is unclear from the narrative provided.

42. Be that as it may, the essence of what the claimant sets out in box 8.2 of his claim form is that he made an oral agreement with Jeff Ostle to carry out some work

at the Solfest Festival, duly attended that festival and began to carry out that work. In the course of doing so, however, he was dissatisfied with the way in which Mr Ostle organised the work , and required him to carry it out, with the result that the claimant resigned (as he puts it in his claim form “quit”). Thus on his own case, his complaint is not of unfair dismissal in the form of actual dismissal , but in the form of constructive dismissal.

43. Additionally, as set out in box 9.2 of the claim form, the claimant worked for some 3.5 days. He mentions there that there was no contract (albeit he says the respondent asserts that there was no contract , but it is unclear where this assertion is made) and he seeks therefore remuneration on the basis of a quantum meruit at the rate of £150 per day. He therefore seeks unpaid wages in the sum of £525. As he has observed in the course of the email correspondence, that is a separate and relatively straightforward claim , which lies against whoever employed the claimant for the work that he did over those 3½ days.

44. The difficulty that presents at the moment is the lack of an identifiable respondent to respond to the proceedings. The style K-9 Waste Management is clearly a trading style, and the Employment Judge can find no limited company, either present or previously existing, with that name. It consequently appears to be a trading style. In relation to Mr Jeff Ostle, and the claimant subsequently said in email correspondence, he was the “proprietor” of that business. In other words, the correct respondent appears to be Jeff Ostle t/a K-9 Waste Management. That said, neither Jeff Ostle nor anybody on behalf of K-9 Waste Management has responded, the proceedings having been sent in relation to that respondent only to the Sheffield address. Whilst it is appreciated that there is no correspondence returned by Royal Mail from that address, the Employment Judge has severe misgivings as to whether these proceedings have ever actually come to the attention of Mr Ostle, particularly given that the events to which they relate are now some five years ago. It may well be the case that the claimant has a claim for unpaid wages against Mr Ostle, but it is far from clear that Mr Ostle has been notified of these proceedings.

45. The Employment Judge has made some enquiries of his own as to whether the address given for Mr Ostle, and indeed the Sheffield phone number referred to in box 2.2 of the claim form is correct, or whether there is any other person that may be being referred to. The Employment Judge’s researches have indicated that there is a Geoffrey Martin Ostle, who is a director of a company called Ostle Construction Limited, the address of which , and indeed the personal address of Mr Ostle being Stonegarth, Millhouse, Hesket Newmarket, Wigton, Cumbria, CA7 8HR. This seems something of a coincidence , given the proximity of Wigton to the venue for the Solfest Festival, and the Employment Judge wonders if in fact this is one and the same person as engaged the claimant. If so, the proceedings could be re-served upon Mr Ostle , or indeed Ostle Construction Limited if the claimant considers he was employed by that company, and there may be some prospect of the claimant then establishing a potentially viable individual or company respondent , at least in respect of the unpaid wages claims. For the present, however, the Employment Judge sees little point in proceeding any further in making any awards in respect of unpaid wages against K-9 Event Waste Management at the Sheffield address unless and until the claimant (whom , it is noted appears to be familiar with the Sheffield area and could perhaps make his own enquiries at the address in question) confirming that he is content that he was employed by a person or entity that is still

either living at , or trading from the Lowedges Crescent address in Sheffield. If the claimant is content to proceed on that basis , then the Tribunal agrees with him that there appears to be no defence to the claim for unpaid wages and the Tribunal would proceed to issue a rule 21 judgment in respect of those unpaid wages against Mr Ostle trading as K-9 Event Waste Management at the Sheffield address. Consequently it is a matter for the claimant to confirm if he wishes the Tribunal to do that, and that will be done.

46. In the alternative, however, if as a result of his enquiries , and any further enquiries the claimant may make of his own, the claimant is of the view that Jeff Ostle is not the correct respondent , and that the person of a similar name with the address in Wigton is the correct respondent then the Tribunal can, if the claimant so seeks, amend the claims and re-serve them upon that individual, and/or his limited company. Consequently the Employment Judge proposes to allow the claimant a period of time in which to consider how he wishes to proceed in relation to the wages claims.

b) The unfair dismissal claim.

47. Turning, however, to the unfair dismissal and discrimination claims, regardless of the identity of the respondent, there are serious issues in relation to whether the Tribunal has jurisdiction to entertain either of these claims. The Employment Judge will start with the unfair dismissal claim.

48. There seems no issue that the claimant lacks the qualifying period of two years' service to present a complaint of "ordinary" unfair dismissal. He therefore must bring himself within the exceptions, as he is clearly aware, set out in section 108 of the Employment Rights Act 1996. He has sought to do so by reference to section 108(3)(c), which makes reference to section 100 of that Act. This is the section which provides that a dismissal shall be regarded as unfair if it is for a health and safety related reason. That is a generic term , as the section goes on in the various subsections to specify more precisely what type of reason will constitute a health and safety related reason. As will be apparent from a perusal of section 100(1) there are a number of very specific and very different circumstances in which a claimant may seek to rely upon this species of automatically unfair dismissal. As will also be appreciated from a perusal of those subsections, a number of them depend on whether or not , in the particular employment concerned , there was or was not a health and safety representative or a health and safety committee. Further, it is also a relevant consideration as to whether a claimant is contending that, regardless of a health and safety committee or representative being in place, he or she was dismissed because in circumstances of danger which they reasonably believed to be serious and imminent and which they could not reasonably have been expected to avert they left or proposed to leave, or refused to return, to their place of work. This is not an exhaustive list , but it does illustrate that the exceptions provided under section 100 are very specific , and very fact sensitive.

49. As pointed out above, a further complication in this case is that the claimant is not relying upon an actual dismissal , but upon a constructive dismissal. It is legally possible for there to be an automatically unfair constructive dismissal. In considering whether a constructive dismissal is automatically unfair , as opposed to an actual dismissal, however, the Tribunal has to be careful to focus upon the reason for the fundamental breach of contract which constituted the grounds upon which the

claimant subsequently resigned , and was constructively dismissed. In other words, when looking to see if a constructive dismissal was for an automatically unfair reason the Tribunal has to look at the reasons for the treatment that is alleged to constitute the breach of contract. From a perusal of the claimant's claim form it appears that the case that he may be seeking to advance is based upon the manner in which the respondent (whoever that employer was) required him to go about the business of picking up litter , and disposing of it during , or in the aftermath of, the festival. From the description the claimant sets out in paragraph 8.2 of his claim form, he clearly had issues with the way in which that task was being carried out , and how he was required to carry it out from a health and safety point of view. That the Tribunal can understand. The difficulty with this, however, seems to be that what the claimant is complaining about is the manner in which he was expected or required to carry out that task , which he considers to be a breach of health and safety. That may well amount to a fundamental breach of his contract of employment. The danger here, however, is of confusion between the nature of the breach of contract relied upon, and the reason for the breach being perpetrated. It seems to the Employment Judge here that the two are in fact the same , and elide into each other. The claimant is not saying that the respondent breached , in a separate and subsequent breach, his contract of employment because he had raised health and safety related issues , or was expected to work in an unsafe way, his complaint is that is what the breach of contract actually constituted. The breach was requiring him to work in breach of health and safety considerations, but it was not perpetrated because the claimant had, prior to it, taken any of the steps set out in s.100 This may appear to be a subtle difference, but it is an important one, and the claimant, in short, cannot succeed in a complaint of automatically unfair dismissal simply on the basis that the breach of contract upon which he relies as entitling him to resign was itself a breach of an implied term to carry out the work in accordance with all due health and safety requirements. Consequently, whilst appreciating how the claimant may consider there is a connection between health and safety related issues , and his decision to resign, which doubtless on his case there was, that is not sufficient in the Employment Judge's view to give him a potentially viable claim in respect of a constructive automatically unfair dismissal.

50. Consequently , at present the Employment Judge cannot see a basis upon which , even put that way , he can avoid the requirements for the two year qualifying service for ordinary unfair dismissal, and he cannot see that the claimant's claim of automatically unfair dismissal has any reasonable prospects of success. He proposes to strike it out on that basis.

b) The discrimination claims.

51. Turning to the claimant's other claims, of discrimination, as the claimant again has acknowledged in his email correspondence , his claim form did not set out an apparent basis upon which his claims were being advanced on this basis. Indeed this was why he was asked at an early stage to provide further particulars of his religion and belief claims , which he did in an email sent to the Tribunal on 21 May 2018. The Employment Judge has considered those particulars, and the further information that the claimant has more recently sent to the Tribunal on 1 October 2018 in which he says that the relevant beliefs were part of a philosophical system, which stem from the founding principles of the "Born Again Agnostics". It is not clear if the claimant is saying that he himself is a Born Again Agnostic. If so, he needs to

establish that that in itself constitutes a religious or philosophical belief. Returning to the particulars that he originally provided on 21 May 2018, the Employment Judge struggles to see that the matters he set out there are capable of amounting to religious , or even philosophical beliefs. A belief that one should engage in one's tasks as effectively as possible (for example using the right tools) and to do what wants doing rather than the least that needs doing hardly seems to the Employment Judge to be capable of being, as the claimant contends it is, a "tenet" of any faith. It is simply a common sense view as to how one should carry out a task, and to elevate it into any form of tenet of faith seems to the Employment Judge to be an elevation unworthy of any form of "philosophical" or religious element. Similarly, a belief that "one should not suffer fools" is not, the Employment Judge considers, one that is held as a consequence of any adherence to principles of Born Again Agnosticism, any more than a belief in the rule of law is.

52. The test laid down in ***Grainger plc v Nicholson [2010] IRLR 4*** of whether a belief falls within the ambit of the Equality Act 2010 by Burton , J. is that to do so it must:

Be genuinely held;

Be a belief, and not an opinion or viewpoint based on the present state of information available;

Be a belief as to a weighty and substantial aspect of human life and behaviour

Attain a certain level of cogency , seriousness and importance

Be worthy of respect in a democratic society , be not incompatible with human dignity and not conflict with the fundamental rights of others.

53. Applying that test to the beliefs the claimant relies upon, the Employment Judge cannot see any reasonable prospect of them satisfying those tests. A belief that one should engage in one's tasks as effectively as possible (for example using the right tools) and to do what wants doing rather than the least that needs doing is not a belief which can be regarded as relating to a weighty and substantial aspect of human life and behaviour. It is the sort of view, which, doubtless if many people were asked if they agreed with , they would say they did, but that does not make it, firstly, a "belief", and secondly, applicable to weighty and substantial aspects of human life and behaviour. It is presumably of equal application to tasks from decorating a room to building a nuclear power station. Further, even if capable of amounting to a belief, that is not to say that it amounts to a belief with the necessary degree of cogency, seriousness or importance to bring it with the Act.

54. "Not suffering fools gladly" similarly fails to qualify as a relevant belief. Firstly, it is arguably not a belief at all, it is a behavioural trait. Secondly, such a belief, if it is one, is not compatible with human dignity, and may well conflict with the fundamental rights of others. Some persons perceived as "fools" , for instance may have disabilities, or other social disadvantages which render them less capable than other persons. This belief suggests that the holder has a degree of impatience with such persons, and would not afford them the tolerance and respect that would be more consistent with their human dignity and their fundamental rights.

55. Finally, a belief in the rule of law , it is accepted may well amount to such a qualifying belief. The claimant's difficulty, however, is that at its highest his case is that Jess Ostle treated him in the unfavourable way that he did because of the claimant's views, which he apparently expressed, on how the disposal of waste from the Solfest site should be carried out. That may conceivably relate to the first of three "beliefs" relied upon, but it is hard to see how it relates to either of the other two. The other two may be the reasons why the claimant "spoke up" as it were, but that is a long way from establishing that he was treated the way he was because he held those two particular views, which, as far as can be gleaned, he does not say he expressed.

56. The claimant has not specified what type of discrimination claims he is making, but they appear to be direct discrimination claims, i.e. the respondent, in the person of Jeff Ostle, treated him less favourably that he did or would have treated someone who did not have such beliefs, by leaving him out of a briefing, and giving him the worst jobs to do , with inadequate PPE.

57. At present it seems to the Employment Judge that the most the claimant could possibly hope to establish is that , having told Jeff Ostle how he considered that the work ought to be carried out, and having the view (rather reinforced by the strong terminology of his e-mail of 1 October 2018), and (possibly) also informing Jeff Ostle that he considered lacked the necessary competence to direct him in the task of clearing litter from the site, Jeff Ostle then took offence and treated him badly.

58. On that basis, and for those reasons, it seems to the Employment Judge that the claims of religious or belief discrimination , against the current respondent , have no reasonable (i.e. more than fanciful) prospects of success and consequently the Employment Judge proposes to strike them out.

59. Consequently the Employment Judge proposes to strike out both the claimant's complaints of unfair dismissal , and those of discrimination on the grounds of religion or belief . He will , however, afford the claimant a final opportunity to make any further written representations he wishes, to or to seek a further hearing at which he could ,and should, attend in person and may be able to further explain these claims before doing so. Indeed, it is an unfortunate aspect of this claim that the claimant has not thus far attended a hearing, as oral explanation and discussion of his claims is far more likely to lead to them being understood by the Tribunal.

Further steps.

60. In relation to his unpaid wages claims, the claimant is invited to consider further as to whether the correct respondent to those claims should be or remain as Jeff Ostle trading as K-9 Waste Event Management at the Sheffield address, or whether he wishes to seek to amend , to allege that any other person or entity was in fact his employer and liable for those unpaid wages. In the event that he wishes to do so, of course, the Tribunal will then have to re-serve the proceedings upon that person or entity and then consider any response that may be entered into in relation to the merits of the claims for unpaid wages.

Solfest Limited

61. For the avoidance of doubt, whilst Solfest Limited was to have been added as a respondent, the Tribunal's previous Order actually refers to Solfest Festivals, and not the limited company, being joined as a respondent. That, with all due respect to the Regional Employment Judge, is perhaps an oversight ,in that Solfest Festivals is not a legal entity. There is a limited company, with no apparent connection to anyone called Ostle (none of its Directors are, or have been, anyone named Ostle) called Solfest Limited, whose registered office is The Old School House, Tebay, Penrith, Cumbria, CA10 3TP. It is not, however, that company which has been joined formally into these proceedings, and in the light of the Tribunal's findings in relation to the prospects of success of any claims against it, the Employment Judge sees no reason to correct that. The claimant has never contended that this company employed him, and so it is not the correct respondent to his arrears of wages claims, it cannot be a respondent to his unfair dismissal claim, even if it can proceed, nor can it have discriminated against the claimant, as his employer.

62. Its sole potential liability, therefore, could only conceivably be in relation to instructing, causing or inducting discrimination (s.111 of the Equality Act 2010) or aiding discrimination (s.112(1) of the Act).

63. In relation to the former, such liability can only arise where the alleged inducer is in a relationship to the perpetrator , whereby the inducer was in a position to commit a contravention in relation to the perpetrator. In other words Solfest Limited could only be liable under this section if it could have been liable for discrimination committed against Jeff Ostle. As he was not, and the claimant has acknowledged this, that company's employee, but a sub – contractor , there could never be such liability, and hence the section is not engaged.

64. In relation to the latter , s.112 applies, and Solfest Limited could only be liable if it "knowingly" helped Jeff Ostle commit the discrimination. That would require it to be aware that Jeff Ostle was behaving as he was (which at present is little more than not including the claimant in a briefing , and making him wade through large quantities of litter in his sandals), and why he was doing so i.e. because of his beliefs. As the claim against the actual employer on this basis is far from clear or convincing, and lacks reasonable prospects of success, the Employment Judge does not propose to perfect the addition of this respondent on the basis of it allegedly aiding the commission of what is unlikely to be established as any breach of the Equality Act at all.

65. Further, there would be severe limitation issues in relation to any such claim being advanced by the claimant against this company some five years after the event, and consequently the Employment Judge sees no good reason why the claimant ought at this stage to be permitted to amend to bring this highly speculative and sole claim against that additional respondent. Consequently the Employment Judge makes the orders set out above.

Employment Judge Holmes

Dated : 28 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 November 2018

FOR THE TRIBUNAL OFFICE