



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Navaratnam

v

**(R1) BP (MRH Ltd)
(R2) MRH Ltd (BP)
(R3) JS Thurai Retail Ltd**

JUDGMENT ON RECONSIDERATION

I set aside the judgment sent to the parties on 20 April 2018 and re-instate the proceedings against the above three respondents for the reasons that follow.

REASONS

History of the matter

1. On 17 May 2017 the claimant presented claims of unfair dismissal, unpaid wages, and a claim for outstanding holiday pay against the above respondents. The claim was accompanied by an early conciliation certificate which name the prospective respondent as “MRH Linford Wood”. The proceedings were served on the three named respondents. The hearing date of 21 September 2017 was fixed to hear the claims. The response served on behalf of the first and second respondents denied that the claimant was at any stage employed by either respondent and further raised the issue of jurisdiction applying the provisions of S.13A of the Employment Tribunals Act 1996 on the basis that the early conciliation certificate was not obtained against any of the named respondents to the proceedings and accordingly the Tribunal has no jurisdiction to consider the claims. The first and second respondents requested the Employment Tribunal list a preliminary hearing to determine both jurisdiction and the identity of the correct respondent.
2. On 2 August 2017 a response was received from the third respondent. The third respondent admitted it was the claimant’s employer and took the point of jurisdiction there being no early conciliation certificate issued against the named third respondent. The third respondent defended the claims for the factual reason set out in the response, disputing the claimant’s factual allegations, and sought a jurisdictional hearing because of the S.18A Employment Tribunals Act 1996 on prevention.
3. An application was made by the first and second respondent by letter dated 14 August 2017 for a preliminary hearing to determine the jurisdictional issue. That letter does not appear to have been responded to by the Tribunal. On

12 September 2017 an application was made on behalf of the third respondent for the one-day hearing of the claims listed for 21 September 2017 to be postponed and re-listed over two days. That letter does appear to have been responded to in that on the direction of an Employment Judge the hearing fixed for 21 September 2017 was postponed to a date to be fixed and the claimant was ordered within 7 days to provide the correct full name and address of his actual employer.

4. On 19 October 2017 the Tribunal received a letter from Adi Sivalingam Legal Consultancy Ltd stating that organisation was instructed to act for the claimant. By letter dated 25 November 2017 the parties were notified that the hearing had been re-listed for two days for 24 and 25 April 2018.
5. On 22 December 2017 the first and second respondents made an application for the claim to be struck out in accordance with Rule 37(c) and 37(d) of the Employment Tribunals Rules of Procedure 2013, the claimant having failed to respond to the Tribunal in making it clear who his former employer was and further stating that the issue of jurisdiction should be determined at a 2 hour preliminary hearing and the two day hearing vacated.
6. On 11 February 2018 on the direction of Employment Judge Sigsworth a copy of the respondent's representatives letter of 14 August 2017 and Tribunal letter dated 14 September 2017 were sent to the claimant's representative with a direction that the claimant respond by the 19 February 2018.
7. On 15 February 2018 an Employment Judge directed that the third respondent be served with the proceedings and a further direction was given by an Employment Judge requesting a copy of the claimant's letter of employment when commencing his employment together with any payslips in his possession.
8. By letter dated 16 February 2018 the claimant's representative responded to the Tribunal stating "Mr Navaratnam has confirmed to the best of his knowledge his employer was BP MRH (Ltd) and JS Thurai Ltd". That letter appears to have simply been placed on the file and not copied to any party.
9. On 23 March 2018 on consideration of the first and second respondent's representatives letter of 19 March 2018 setting out details of the claimant's failure to provide a copy of the letter of employment and payslips as requested by the Tribunal I directed that a strike out warning be sent to the claimant providing until the 9 April 2018 for his to reply and the strike out warning stating that consideration was being given to strike out because the claim was not being actively pursued. That instruction was not actioned by the administration until the 4 April 2018 and the administration of their own volition extended time until the 13 April 2018.
10. The file was referred to me on 20 April 2018 there having been no response from the claimant to the strike out warning and accordingly by judgment of that date the claims for unfair dismissal, unpaid wages and holiday pay were struck out because they were not being actively pursued. The hearing listed

for 24 and 25 April was vacated although there is no record on the administration file that this was ever communicated to the parties in writing.

11. On 24 April the claimant attended the hearing and was informed that the proceedings had been struck out. An application was then made on 30 April 2018 on behalf of the claimant, received by the Employment Tribunal on 2 May 2018, for reconsideration of the judgment dismissing the proceedings. The thrust of the reconsideration application was that the claimant was unaware the proceedings had been struck out, not having received a judgment from the Employment Tribunal and further explained that the claimant had not complied with the order to provide copy payslips because the claimant had received wages in cash without a payslip. A witness statement provided with the application for reconsideration set out further details of the alleged lack of any documentation from the claimant's employer accompanying payment in cash of his wages. It is clear from that witness statement that the claimant accepts that employment had transferred under the provisions of the Transfer of Undertakings Regulations to the third respondent JS Thurai Retail Ltd. Although it is not directly relevant to the matters I have to consider in connection with the reconsideration application the claimant in that witness statement denies that there was any theft on his part from a customer's wallet, the alleged theft being the pleaded basis for dismissal.
12. That application was copied to the respondent on my direction. On 28 August 2018 I directed that the respondents notify the Tribunal whether they were content for the reconsideration application to be dealt with (it not having been refused by me under the provisions of Rule 72(1)) without a hearing on the basis of written submissions, giving the parties to the 14 September 2018 to make their written submissions.
13. Inexplicably the file was not subsequently referred back to me by the administration for consideration until 26 November 2018. I was extensively committed across the South-East Region in December and was unable to consider the reconsideration application until 27 December 2018, the date on which I am dictating these reasons.

Conclusions

14. Having fully considered the application in this case and applying the overriding objective given that the claimant's case is that he was never provided with any written payslips or other documentation by the third respondent, and it was his failure to provide those payslips and comply with the Tribunal's letter of 23 January requiring he provide copies of his payslips, the basis of the subsequent strike out warning of 4 April 2018, it is in my view in the interests of justice to set aside the judgment of 20 April 2018 and to reinstate the claims.
15. Given that in an email dated 19 October 2018, referred to me by the administration on 26 November 2018, the third respondent's representatives state:

1. *We are instructed to inform the Tribunal that with effect from 4 July 2018, JS Thurai Limited relinquished the franchise to BP MRH Limited.*
2. *We are also instructed that the JS Thurai Limited commenced voluntary winding up proceedings which process was completed on 29 August 2018.*
3. *Further, Markel Law are no longer instructed in this case, therefore the Tribunal is respectfully requested to direct any enquiry to Mr Jegatheepan Sinnathurai who has been added as a recipient;*

it appears appropriate to leave at this stage as respondents to the proceedings not only the third respondent but also the first respondent BP (MRH Ltd).

16. However, it is also clear to me on a thorough reconsideration of the file, (and it is unfortunate that the earlier applications made by the respondents in this request were simply not actioned) to list a preliminary hearing to consider the jurisdiction issues applying the provisions of S.18A of the Employment Tribunals Act 1996. That must be dealt with before any substantive claims can be listed for hearing. This should have been actioned before and I regret that it was not done. I accordingly direct that a preliminary hearing with a time allocation of 2 hours be listed to consider whether applying the provisions of S.18A of the Employment Tribunals Act 1996 the Tribunal have jurisdiction to deal with these claims if the requirements of early conciliation have not been applied with in that no early conciliation certificate has been obtained against a named respondent to these proceedings. Applying the overriding objective it appears to me proportionate in those circumstances that the remaining respondents may well wish to provide written representations for consideration by the Tribunal at that preliminary hearing and not actually attend the hearing.

Regional Employment Judge Byrne
15 January 2019

Date:
16 January 2019

Sent to the parties on:

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For the Tribunal Office