



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Ms E Sumner

**Respondent**  
Virgin Holidays Limited

and

## PRELIMINARY HEARING

**Held at Ashford on** 26 November 2018

**Representation**

**Claimant:**  
**Respondent:**

Mr T Adkin, Counsel  
Ms C McCann, Counsel

**Employment Judge** Harrington

## JUDGMENT

- 1 The Claimant was employed by Virgin Holidays Limited.
- 2 Virgin Holidays Limited is the correct Respondent to this claim and the title to these proceedings is amended accordingly.

## REASONS

[The numbers in square brackets below refer to pages within the agreed bundle.]

### Introduction

- 1 This is an open Preliminary Hearing to determine who was the Claimant's employer. In considering this matter I have been provided with an agreed bundle of documents. I have also heard evidence from Mrs Shelley Pleydell, a manager

in employee relations for Virgin Atlantic Airways Limited and oral submissions from both parties. The Claimant has been represented by Mr Adkin, of Counsel and the Respondent by Ms McCann, of Counsel. I am grateful to them both for their helpful and focused presentations. It is important to note at this stage that Ms McCann is instructed not only by Virgin Atlantic Airways Limited but also by Virgin Holidays Limited.

- 2 The Claimant was employed from 14 November 2011 to 28 October 2017, most recently in the role of 'Expert – Personal Holidays'. By an ET1, received by the Tribunal on 30 January 2018, she brings claims of unfair dismissal and wrongful dismissal. At section 2 of the ET1, Virgin Atlantic Airways Limited ('VAA Ltd') is identified as the Claimant's employer. However within the additional information section of the form, the Claimant highlights the disparity between the name of her employer as stated on the Contract of Employment and that appearing on her payslips. Accordingly the Claimant quite sensibly proceeded to enter into early conciliation with VAA Ltd, Virgin Holidays Ltd and Virgin Holidays.
- 3 VAA Ltd, denies that it was the Claimant's employer. It has submitted from the start of this process that the Claimant was employed by Virgin Holidays Ltd ('VH Ltd'). At the commencement of this Preliminary Hearing Ms McCann clarified that there was no objection from either of her clients to VH Ltd being the Respondent to this claim. Mr Adkin confirmed that there could be no agreement between the parties as to the identity of the Claimant's former employer and that the Claimant required the certainty of a Tribunal determination on the matter.

### **Findings of Fact**

- 4 It is agreed that when the Claimant commenced her employment in 2011, she received training with VAA Ltd. She was equipped with the same training in respect of her presentation and the same uniform as cabin crew of VAA Ltd. This uniform had the logo 'Virgin Atlantic' on it, as did her identification badge.
- 5 Throughout her employment the Claimant received payslips, with her salary being paid into her bank account. Her payslip, an example of which is to be found at page 94 of the bundle, refers to 'Virgin Atlantic' and this reference was also displayed on her bank statements, see for example, page 93x. 'Virgin Atlantic' is not the Respondent, VAA Ltd, but rather is a reference to the name of the company, Virgin Atlantic Limited, which wholly owns both VAA Ltd and VH Ltd.
- 6 In 2015 there was a merging of some business functions performed for both VAA Ltd and VH Ltd. This merging saw the two businesses moved to the same headquarters and the human resources function for VH Ltd transferred to the VAA Ltd's people team.
- 7 In a letter dated 19 September 2017, which enclosed relevant contractual documentation, the Claimant was offered the role of 'Expert – Personal

Holidays'. The letter referred to her appointment being 'WITH Virgin Holidays Ltd' [67]. The contract also referred to her employer as being Virgin Holidays – this is in bold type at the top of the document [68], with further relevant references being made in certain clauses, see for example, clause 4.2.

- 8 The circumstances leading to the cessation of the Claimant's employment are not relevant to my decision today. What is relevant however is the documentation generated at the time. The P45 produced upon the termination of the Claimant's employment referred to VAA Ltd as the Claimant's employer. This was consistent with the Claimant's P60. Furthermore, internal emails concerning processing the Claimant as a leaver and her pension contributions, were sent from personnel referred to as VAA Ltd Human Resources. 'Fly.virgin' email addresses were used which it was confirmed are VAA Ltd email addresses.

### **Conclusions**

- 9 Both parties agree that my analysis of this issue must begin with the relevant contractual documentation. During submissions the parties also referred me to three relevant cases: Drake International Systems Ltd and others v Blue Arrow Ltd [2016] ICR 445, Drinkwater Sabey Ltd v Burnett and another [1995] EAT 328 and Ryan v Bennington Training Services Ltd UKEAT/0345/08/LA.
- 10 I was reminded that I can look behind the written terms of an agreement if I consider it to be a sham. A tribunal faced with an allegation that a contract does not represent the reality of a situation must consider whether or not the words of the written contract represent the true intentions or expectations of the parties – in carrying out this consideration, a tribunal will have to examine all of the relevant evidence.
- 11 In this case, I do not find evidence of a sham or that the contract was not the reality of the situation.
- 12 In my judgment, the Claimant was employed by Virgin Holidays Ltd ('VH Ltd'). I am satisfied, having carefully looked at the relevant contractual documentation, that they were her employers. The Contract of Employment and covering letter is unambiguous. I accept the Claimant entered into a contract of employment with VH Ltd and that contract reflects the true situation.
- 13 I entirely understand why the Claimant wished to have clarity on the point. There are various factors in this case which have resulted in a confusing state of affairs for the Claimant, as an employee, including different business names being used on other relevant documentation. This confusion has been accepted, to some extent, by a subsequent change being made to payslips which are now given to VH Ltd employees.

- 14 Whilst I accept that these references were caused because of an agreement with HMRC as to the running of the PAYE system and the documentation which is generated from that, including the P45 and P60, I do consider that this has contributed to the Claimant's understandable confusion. A letter generated by HMRC refers to the Claimant's employer as being Virgin Atlantic Airways Ltd [110D]. Without further clarification from her employer, I query how the Claimant was ever to understand that this was incorrect.
- 15 What is a helpful scheme both to the companies involved and to HMRC is not necessarily helpful to employees and those leaving employment requiring certainty as to the identity of their employer.
- 16 As set out in the introduction, there is no objection to the Claimant's application to add VH Ltd to these proceedings. As Ms McCann has identified, there is no prejudice to them being added at this stage.
- 17 I have taken into account the principles set out in Drake International Systems Ltd and others v Blue Arrow Ltd [2016] ICR 445 and reminded myself of Rule 34 of the Employment Tribunals Rules of Procedure 2013. I am entirely satisfied that it is appropriate to name VH Ltd as the correct Respondent to these proceedings rather than VAA Ltd and the claim shall proceed against VH Ltd accordingly.

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Employment Judge Harrington  
17 December 2018