



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr N Navaratnam**

**v**

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

**Heard at:** Watford

**On:** 15 March 2019

**Before:** Regional Employment Judge Byrne

## **Appearances**

**For the Claimant:** Mr Sivalingham - Solicitor

**For the Respondents:** No representation of first and second respondents (they not being a legal entity, although Mr Brotherton, non-practising solicitor, was initially present on behalf of MRH GB Ltd) - and no attendance on behalf of the third respondent

## **JUDGMENT**

I strike out the claims in these proceedings because the claimant has not complied with the requirements of Section 18A of the Employment Tribunals Act 1996 in that the early conciliation certificate does not correctly name the respondent to the proceedings and the requirements of Section 18A not having been complied with the Employment Tribunal has no jurisdiction to hear the claims which must therefore be dismissed.

## **REASONS**

1. The background to consideration of the jurisdiction point applying the provisions of Section 18A of the Employment Tribunals Act 1996 was set out in a judgment on reconsideration together with reasons sent to the parties on 16 January 2019. I do not propose to repeat in detail in giving my reasons today what is set out in that judgment. However, it was clear from paragraph 16 of those reasons that on a thorough reconsideration of the file, (and I record again that it is unfortunate that early applications made the respondents in this request were simply not actioned), it was necessary to list today's preliminary hearing to consider the jurisdiction issues applying the provisions of Section 18A of the Employment Tribunals Act 1996.

2. The requirements of that legislation were helpfully set out in the document provided by Mr Navaratnam's solicitor today, namely that before instituting relevant proceedings a prospective claimant must provide prescribed information to ACAS in order that the mandatory requirements of pre-action conciliation are met.
3. The requirements of the contents of an early conciliation certificate , to be found at rule 8 of the Schedule to Regulation 5 of the Employment Tribunals ( Early Conciliation: Exemption and Rules of Procedure ) Regulations 2015 include the requirement that it must contain the name and address of the prospective claimant and the name and address of the prospective respondent , the date of notification to ACAS of early conciliation , the unique reference number of the early conciliation certificate and the date upon which it was issued.
4. Mr Navaratnam worked at a petrol station forecourt in Milton Keynes, as a cashier, initially for BP Express Shopping Limited, and the premises are located at 7 Saxon Street, Milton Keynes, MK14 6PBP.He was dismissed from his position as cashier on 25 March 2017 due to, as set out in his ET1 "False allegation of theft made against me". He presented a claim to the Employment Tribunal on 17 May 2017 bringing claims of unfair dismissal, for holiday pay and for unpaid wages, accompanied by an Early Conciliation Certificate.
5. In this case the early conciliation certificate correctly records the claimant's name and address, and it was issued by ACAS on the 2 May 2017. It describes the prospective respondent as "MRH Linford Wood, Saxon Street, Linfordwood, Milton Keynes, Buckinghamshire MK14 6PB. The claim form names a number of respondents, the first being MRH Ltd (BP) and the second being BP (MRH) Linford Wood. The addresses given in the ET1 for those two respondents are respectively Vincent House, 4 Grove Lane, Epping, Essex CM164LX (a different address to that contained in the early conciliation certificate) and for the second respondent, namely BP (MRH) Linford Wood the address of BP Saxon Street, Linford Wood, Milton Keynes, Buckinghamshire MK14 6PB, the same address as in the early conciliation certificate.
6. The point on early jurisdiction was raised in responses that were sent in on behalf of the first and second respondents. Those responses stated that neither the first or second respondent are legal entities or trading names or other identifiable entities, and that the location at which the claimant worked is owned by Malthurst Ltd which falls within a group of companies of which MRH (GB) Ltd is the parent company, Malthurst being a separate legal entity, and that neither Malthurst Ltd or Malthurst Ltd MRH (GB) Ltd employed the claimant. The responses stated that Malthurst Ltd owned the site at which the claimant worked, a petrol station, but that the site was operated by JS Thurai Retail Ltd who employed staff to operate the petrol station. Subsequently a third respondent was joined to the proceedings; JS Thurai Retail Ltd and their position is that in their response they accepted that they were the claimant's employer at the time of his dismissal and for

the reasons set out in their response they disputed that there was any unfairness in his dismissal.

7. As I have previously stated and as is explained in the reasons to the judgment sent to the parties on 16 January 2019 there have been unacceptable delays in the administration of this file and the matter I am dealing with today should have been dealt with way back at the beginning of these proceedings, but I am now able to deal with it today.
8. Other matters I should mention by way of general background is that in correspondent on the file it appears that JS Thurai Retail Ltd are insolvent Documentation was sent to the Tribunal by Mr Brotherton of Croner Consulting representing MRH GB Ltd, which company has effectively given instructions for the responses which were presented on behalf of the first and second named respondents, but which is a company which was not a named respondent in either the early conciliation certificate or the claim as presented. MRH GB Ltd stated in an email that the claimant was employed by JS Thurai Retail Ltd and that subsequently there was a TUPE transfer of that business on the 4 July 2018 (which post-dates the claimant's dismissal which was on the 25 March 2017) to a company called SLR Salon Ltd and in turn there has been a further transfer from SLR Salon Ltd to Glen and Freda Trading Ltd.
9. Mr Navaratnam has given evidence today as to why he believed his employer was either of the first or second respondents and has also had an opportunity to explain why the early conciliation certificate was obtained in the name of MRH Linford Wood. Mr Navaratnam's first language is Tamil and he has had today the benefit of a Tamil interpreter, Ms Lanchelian. His evidence is that initially he was employed at the service station by BP Express Shopping Limited and there were no issues arising whilst that company was his employer. His evidence to me is that that changed in 2016 and he says that MRH GB Ltd then became his employer. I asked him whether he had any documentation which confirmed any payments to him by that employer. He told me that he had not received any payslips and that he was paid by a mix of cash and by payments direct into his bank account, but he has not produced any bank statements which would assist an audit trail as to the identity of the employer. He simply said, when I asked him that yes it was MRH GB Ltd.
10. I asked how he was aware of a change of his employer from BP Express Shopping Limited to MRH GB Ltd and he said that there was a document posted up on the notice board at his place of work, but he did not have copy of any document with him or any other documentary evidence. I asked him who gave him instructions at work after the change of employer on a day-to-day basis to see if that could assist in getting to the bottom of who the employer was. He said that that instructions were given to him by a white person, but he did not know their name.
11. I asked him about the circumstances of his dismissal. He told me that he was dismissed in the course of a telephone conversation by somebody

called Mr Dilan, but he said that Mr Dilan was somebody that he had not had any previous dealings with, but he believed they were part of MRH Ltd. He was unable to explain why that was his belief or what it was based on. I asked him why the early conciliation certificate was in the name of MRH Linford Wood but he was not unable to give any substantive response to that beyond that he thought "Everybody was working through Linford Wood".

12. I asked Mr Navaratnam whether the name JS Thurai Retail Ltd meant anything to him because that company having been added as a respondent to the proceedings they accepted in their response to the proceedings that they were his employer. He said he had no knowledge of them.
13. Mr Navaratnam's solicitor argues that the early conciliation certificate is a valid one and, in that connection, relies on the judgment of His Honour Judge David Richardson handed down on 13 September 2017 in the case of *Mr V C De Mota against (1) ADR Network (2) The Co-operative Group Ltd* case number UKEAT 0303-16-1309. I accept that case is authority for one early conciliation certificate covering more than one respondent but the difficulty I have to address is whether it could be said that the differences between the early conciliation certificate obtained in the name of MRH Linford Wood and the names of first and second respondents against whom the proceedings were issued, is something that it is simply a minor matter of an inaccurate name or whether it is more substantial than that. Mr Navaratnam has not provided any evidence to day to show that either the first or second respondent in these proceedings is an extant legal entity or, if either were, that they had any direct connection with J S Thurai Retail Ltd.
14. The other factor I must consider is that there is no evidence before me, other than Mr Navaratnam's assertions, that MRH Linford Wood, MRH LTD (BP) or BP (MRH) Linford Wood were ever his employer. There is nothing by way of documentary evidence to show that any payments from any entity of that name, or a variation of that title, made any payment to Mr Navaratnam for work done by him at the petrol station. However, what is supported by the documentation I have seen is that the first and second respondents were not his employer but that JS Thursi Retail Ltd was. That is confirmed by JS Thurai Retail Ltd in their response to the claim. They refer to their acquisition of the site from BP Express Shopping Limited on 5<sup>th</sup> September (which is consistent with Mr Navaratnam's account of a transfer by BP) and accept that they the claimant's contract of employment transferred to JS Thurai Retail Limited on 5 September 2016.
15. In their response to the claim J S Thurai Retail Ltd set out the detail of the alleged dishonesty on the part of the claimant, namely the theft of monies from a till and the hiding of a customer's wallet, actions which the third respondent says were recorded in CCTV recordings. The response set out who investigated the allegations, opportunities given to Mr Navaratnam to attend a disciplinary hearing and how and by whom the decision to dismiss was arrived at. The response stated that the dismissal was confirmed to the claimant in writing and that he was given an opportunity to appeal which he did not exercise. None of that was put to the claimant to comment on by his

solicitor in the hearing before me, and one might expect it to be if, as is the case, Mr Navaratnam does not accept that JS Thurai Retail Ltd were his employer. I do not find Mr Navaratnam's assertion that he does not know of J S Thurai Retail Ltd to be credible, nor do I find it credible that he has been unable to provide any documentary evidence such as payslips or bank statements to show from whom and when monies were paid into his bank account , which was he told me a part of how he was paid. . I am satisfied that on a balance of probabilities Mr Navaratnam's employer at the time of his dismissal was the third respondent J S Thurai Retail Ltd.

## CONCLUSIONS

16. The claimant's employer at the time of his dismissal having been J S Thurai Retail Ltd the early conciliation certificate was obtained in the name of entities neither of which were the correct respondent to these proceedings. I have taken into account that the address from which the correct respondent J S Thurai Retail Ltd traded and where Mr Navratnam worked namely Saxon Street Linfordwood Milton Keynes Buckinghamshire was correct. Were J S Thurai a linked company to MRH LTD (BP) or BP (MRH) Linford Wood then it could be argued that the spirit of early conciliation had been complied with in that the claim had been notified to one company, linked to another, the actual employer, and that therefore they were aware or could reasonable have been expected to be aware of the proceedings. This is not a situation such as that which existed in **Drake International Systems Ltd and ors v Blue Arrow Ltd 2016 ICR 445 EAT** where a claimant completed the EC procedure in respect of a parent company and sought to amend when the parent company indicated that the correct respondents were four of its subsidiary companies. J S Thurai Retail Ltd is not a subsidiary of the first and second named respondents.

17. JS Thurai Retail Limited is a distinct and separate legal entity, who became the Mr Navaratnam's employer when they acquired the petrol station business at Saxon Street Linfordwood from BP Express Shopping Ltd who, Mr Navaratnam appear to accept, certainly to the extent of it being "BP", were his original employer at the site. The early conciliation certificate having failed to contain the name of the prospective respondent, in this case the claimant's employer, the requirements of Section 18A of the Employment Tribunals Act 1996 have not been complied with and accordingly the Tribunal has no jurisdiction to consider the claim and it must be dismissed.

\_\_\_\_\_  
Regional Employment Judge Byrne

Date: ...2 May 2019.....

10 May 2019

Sent to the parties on: .....

.....  
For the Tribunal Office