



## EMPLOYMENT TRIBUNALS

Claimant

**Ling Bob Limited**

Respondent

**v Construction Industry Training Board**

**Heard at: Leeds**

**On: 17 April 2019**

**Before: Employment Judge Trayler**

**Members: Mrs J Blesic**

**Ms G M Fleming**

**Representation:**

**Appellant: Miss H Oates (Consultant)**

**Respondent: Mr J Byrne (Appeals Manager)**

**JUDGMENT** having been sent to the parties on 25<sup>th</sup> April 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The issue to be determined in this appeal is whether the appellant was properly assessed for the Construction Industry Training Board Levy for 2016 and 2017.
2. In turn this depends upon whether the appellant was an 'employer' within the meaning of section 1(2) Industrial Training Act 1982 which provides that an employee is 'a person engaged under a contract for services, and 'employer' shall be construed accordingly'.
3. The appellant disputes that it was an employer. It concedes that all other requirements in order to be registered and assessed for the levy are satisfied. It further concedes that, if liable, the respondent's calculation of the levy is correct. The amounts levied are £6,728 and £2,289.50.

4. The factual background is that Ling Bob Limited was created as a Limited Company in England & Wales. The purpose of the Company was to 'construct 4 houses as a one-off development'. There is no dispute therefore that it was engaged in construction industry activities within the meaning of Article 3 of the applicable Levy Orders.
5. The CITB assessed the levy due by calculating the labour elements of the invoices provided to the appellant by Landmarks (UK) Limited (hereafter referred to as Landmarks). Landmarks entered into a development agreement and building agreement with the appellant to conduct the building works and construction of four houses. The appellant therefore carried out none of the building work itself but it was carried out exclusively by Landmarks.
6. The respondent did not dispute the appellants assertion that it had no employees on the basis that its sole Director and its Company Secretary were office holders rather than employees. However, the respondent does assert that Landmarks was an employee for these purposes, employed by the appellant.
7. The appellant disputes that it was an employer for the purposes of Section 1(2) of the 1982 Act. The respondent argues that it was an employer because it engaged Landmarks under a contract for services.
8. We therefore seek to determine whether, by entering into a contract with Landmarks the appellant employed that Company and therefore is liable to the levy. The appellant referred us to guidance under the Construction, Design and Management Regulations as to the definition of client, contractor and sub-contractor. The appellant also refers to other informal advice publications as to the meaning of contractor and sub-contractor. However, none of those terms is used in the 1982 Act. Whilst conceding that a limited company is a 'legal person' the appellant submits that it is not liable for the levy on the basis that it was in reality a client of Landmarks and that the 1982 Act provisions cannot have been intended to apply where, as here, the company buys in the entire building work and it is not a contractor or sub-contractor.
9. The appellant at the time of registration of the company and when it entered into the development agreement and building contract did not take any account of the incidence of the training levy. It only became aware on receiving CITB correspondence and the assessment. It had not therefore been misled by any guidance on the levy or otherwise.
10. It appeals against the assessment of the levy, it is for the appellant to show that the levy is wrongly assessed. In legal terms therefore, the burden is upon the appellant to show that the assessment is wrong. In our judgment the appellant has failed to do so.
11. In our judgment the use of the word 'employer' and 'employee' as used in the 1982 Act covers where an agreement is reached which is a contract for services. Reference is made to a 'person' without any qualification. It does not have to be a living individual. It is not restricted such as other statutory definitions of employer and employee are. There is no restriction for example that the employee has to provide the work personally nor any exclusion where the relationship is that of a client and a business.
12. In our judgment a company is capable of being a person for these purposes as it is a legal entity able to enter legally binding contracts, including as here those for services.

13. Therefore, the appellant has failed to show that the assessment is wrong and the appeal fails. The appellant is engaged in the construction business, it contracted with another company to provide building work and the levy attaches to that contract as, for these purposes only, it employs that company. The respondent referred us to the Employment Tribunal decision in **Design Rationale Limited v CITB ET 3300739/2010**, 28 September 2010. In that case a similar view is taken albeit it was not the principal reason for the decision. As there, we find that a person, Landmarks, has been employed by the appellant and therefor the assessment of a levy is not shown to be incorrect.

**Employment Judge Trayler**

17 May 2019