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EMPLOYMENT TRIBUNALS

Claimants

1. Mr S Orleanschi
2. Mr A Orleanschi
3. Mr V Calenov

AND

Respondents

1. Lindner Interiors Ltd
2. Kilmurray
3. Construction Ltd

Heard at: London Central

On: 12 April 2019

Before: Employment Judge Russell (Sitting alone)

Representation

For the 1st Claimant: In person

For 2nd and 3rd Claimants: No appearance

For the Respondent: Ms H Hutchinson, Solicitor

JUDGMENT

1 There are three Claimants in this case. Mr A Orleanschi, Mr S Orleanschi and Mr Calenov. All under separate cases but with similar arrears of pay claims against the Respondents.

2 Kilmurray Construction Ltd should be added as a party to the proceedings as Second Respondent.

3 The First Respondent's application to have the claims struck out, for non-compliance with the Tribunal orders (in particular their failure to provide a schedule of loss) and not actively pursuing their claims, is refused.

4 The First Respondent's application to have the Claimants' wages act claims struck out for being out of time succeeds in respect of those claims prior to February 2018. In consequence, only the alleged underpayment from mid-February 2018 and mid May 2018 shall continue subject to the separate orders given today in respect of this case.

REASONS

5 All three Claimants believed Kilmurray Construction (Kilmurray) was, whether they had a contract of employment or a contract for services, responsible for their outstanding wages. Kilmurray was then a contractor to Lindner Interiors. It seems likely this is correct having heard evidence from both the First Claimant through an interpreter and the First Respondent through Miss Hutchinson, Solicitor.

6 The First Claimant (neither of the other Claimants made an appearance) states he had been misled by the First Respondent as to who was responsible for the debt which is why his ET1 was initially against Mr Dowdall and Lindner Interiors Ltd. It does however seem that Lindner paid Kilmurray as its contractor who may then have failed to pay wages due to the Claimants. Kilmurray is no longer Lindner's contractor.

7 The Claimants have failed for some months and despite numerous Tribunal orders to produce a schedule of loss. This is in part due to tensions between the Claimants but principally a problem of language and understanding what was required of them. They are now clear and that a further failure to provide the information and documentation required (particularly as to unpaid wages) is likely to lead to their claims being dismissed. However due to language barriers, I am satisfied the Claimants were not deliberately ignoring the Tribunal orders and until now had remained uncertain as to the information required.

8 Due to the confusion as to how the alleged indebtedness had arisen the First Respondent is not as yet discharged from the proceedings. However, orders were made seeking information from them that may allow this to happen. For the time being however, given the fact the claim against Lindner Interiors is out of time due to the fact a second conciliation certificate needed to be issued, I extend time for these reasons.

(A) The Claimants did file his complaint (as to wages due) within time.

(B) The Claimants were and remain confused as to the identity of the company responsible for any unpaid wages.

(C) The claims against Lindner Interiors would have been in time had the original ACAS Early Conciliation Certificate (ECC) referred to them.

(D) The Claimants did obtain a further ECC correctly referring to the First Respondent within a short period of time thereafter.

(E) It was not reasonably practicable for the Claimants to have done so before due to their confusion prompted by a number of companies being involved in the structure within which they had been working and to include conflicting advice from Lindner Interior employees.

(F) There was no prejudice to Lindner in this slight delay which they seem partly responsible for in any event.

9 Although an ET1 will now be served on Kilmurray Construction Ltd out of time, the Claimants did approach ACAS as to their complaint against Kilmurray in time and it was simply the Claimants' confusion that meant Kilmurray were not subsequently a Respondent in the proceedings. In such circumstances, I accept it was not reasonably practicable for Kilmurray to be named as a party until my determinations today and time shall be extended to reflect this and allow the case to continue with Kilmurray Construction Ltd as Second Respondent. If this company does owe wages to the Claimants, the confusion on where the indebtedness lies should not enable either Respondent to escape liability and the overriding interest here is for the claims to be heard and, to the extent there is an unlawful deduction of wages, judgment given by the Tribunal in due course.

Employment Judge Russell

Dated: 29 May 2019

Judgment and Reasons sent to the parties on:

30 May 2019

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For the Tribunal Office