



EMPLOYMENT TRIBUNALS

Claimants: Mrs P Farmer & others

Respondents: (1) Hinckley Carer Support Scheme (A Charity)
(2) Miss Gemma Ball
(3) Mrs Gillian Ball
(4) Mrs Lyn Wilson
(5) Mr Roger Ellis

Heard at: Leicester

On: Thursday 10 October 2019

Before: Employment Judge Ahmed (sitting alone)

Representation

For the Claimants: In person (with Mrs Farmer acting as spokesperson not as a representative)

For the Second, Third and Fourth Respondents: Mr Feeny of Counsel

First and Fifth Respondents: No appearance or representation

JUDGMENT ON RECONSIDERATION

1. The Judgment of the tribunal is that pursuant to Rule 70 of The Employment Tribunals Rules of Procedure 2013, the Judgment given on 1 July 2019 (and sent to the parties on 30 July 2019) in respect of the Second, Third and Fourth Respondents only is hereby reconsidered and is revoked.
2. The time for presenting the ET3 (Response) of the Second, Third and Fourth Respondents is extended to 3 October 2019. The Second, Third and Fourth Respondents have leave to defend these proceedings.
3. The Claimants shall no later than 21 days from the date that this Judgment is sent to the parties, either individually or collectively, show cause as to why the Claims against the Second, Third and Fourth Respondents should not be struck out as the claim against them appears to have no reasonable prospect of success. If no reply is received or if no cause is shown the Claims against the

Second, Third and Fourth Respondents may be struck out without any further hearing.

4. In the event that the Claimants are able to show cause, a further open attended preliminary hearing before an Employment Judge sitting alone shall be convened to determine the issues that arise.
5. In respect of the First Respondent only, and in respect of the Claimants Mrs Clews and Mrs Gamble only, the Judgment of 1 July is hereby set aside on the grounds that the ET3 was presented in time.
6. The Judgment of 1 July 2019 against the First and Fifth Respondents is confirmed.

REASONS

1. The Second, Third and Fourth Respondents were at some point all Trustees of the First Respondent, a registered charity. At this reconsideration hearing the Second, Third and Fourth Respondents (who were represented by Mr Feeny of Counsel) submit that the default judgment against them should be set aside because as at the date that the Claimants were dismissed (in November or December 2018), the Second, Third and Fourth Respondents were no longer Trustees of the Respondent.
2. It is not in dispute that the Second and Third Respondents resigned on 17 August 2018 and that the Fourth Respondent resigned on 13 September 2018. As at the date of the preliminary hearing on 1 July 2019, the names of the Second, Third and Fourth Respondents Respondent were still on the Charity Commission's register as Trustees. This was taken as prima facie evidence that they remained Trustees notwithstanding any earlier intimation of resignation. In other words the Second, Third and Fourth Respondents were deemed to remain as Trustees until such time as their names were removed from public records.
3. Mr Feeny on behalf of the relevant Respondents relies on **Finch v Oak [1896] 1 Ch. 409** as authority for the proposition that resignation from an unincorporated association (which is what the First Respondent was) does not require acceptance and is effective immediately. Accordingly, the relevant Respondents' resignations were in his submission effective at the date they were given and not subject to any later acceptance or act by the First Respondent or any officer acting on its behalf. If that is correct the Second, Third and Fourth Respondents would have a complete defence to the claim.
4. The Claimants are not legally represented. It has been suggested to them both previously and today that they may wish to seek legal advice as this appears to be entirely an issue of law. In the meantime, and in the absence of any authority contrary to the proposition put forward by Mr Feeny, I am satisfied that the earlier Judgment against the Second, Third and Fourth Respondents should be set aside.

5. Furthermore the Claimants should show cause no later than 21 days from the date this judgment is sent out to the parties why the claims against the Second, Third and Fourth Respondents should not be struck out as they would otherwise have no reasonable prospect of success. If the Claimants are not able to demonstrate that there is a continuing legal basis for the claim against the Second, Third and Fourth Respondents there is no reason for those Respondents to continue to be parties to these proceedings.
6. This reconsideration decision does not affect the judgment given on 1 July 2019 against the First or Fifth Respondents, neither of whom appeared today nor were they represented. The judgment against them therefore stands and is confirmed.
7. Further directions and orders as to the future conduct of the case shall be made after the period stipulated in paragraph 3 of the judgment has passed.

Employment Judge Ahmed

Date: 21 October 2019

JUDGMENT SENT TO THE PARTIES ON

9 November 2019.....

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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