

Case Nos: 2302073/2018
2302074/2018
2302075/2018
2302165/2018
2302221/2018
2302222/2018



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Smith and Mrs B Vaughan

Respondent: Mr R Stacey t/a East Kent Social Club Canteen

Heard at: Ashford Employment Tribunal

On:

Before: Employment Judge Martin

Representation

Claimant: Mr P McNamee – Para Legal

Respondent: Mr Stacey in person

RESERVED JUDGMENT AT PRELIMINARY HEARING

1. The judgment of the Tribunal is that the Respondent is an unincorporated association and that Mr Stacey is an officer of this association and is jointly and severally liable to the Claimants together with all members of the association which includes its officers and all those who contributed to the running of the association.
2. No response has been received to claim numbers 2302165/18 and 2302221/18 relating to post-termination sex discrimination and the Tribunal finds in default of a response that the Respondent discriminated against the Claimants on the protected characteristic of sex.

RESERVED REASONS

1. This was a preliminary hearing listed following the order of employment Judge Prichard of 11 September 2019 when the full merits hearing was converted to this preliminary hearing. The order set out the issues to be determined at this hearing as follows:
 - a. Whether the Respondent was the Claimant's legal employer and, if so;
 - b. Whether judgment should be entered for the Claimants, or either of them, under rule 21 of The Employment Tribunal rules of procedure 2013 in respect of their post-termination sex discrimination claims because the Respondent has failed to present ET3 responses to those claims and/or because the Respondent has failed to comply with paragraph 4 of the case management order issued by employment Judge Corrigan;
 - c. Whether or any part of the Respondent's responses to the claim's claims for redundancy payments, notice pay and sex discrimination should be struck out under rule 37(1) (a), (b) and/or (c).
2. This order also stipulated that the claims were consolidated and would be heard together. The order of employment Judge Corrigan (paragraph 4) stated:
 4. ***On or before 8 May 2019 the Respondent has leave to amend the response to set out:***
 - 4.1 ***confirmation of whether or not he accepts he was the Claimant's employer and if not, the reason why not;***
 - 4.2 ***the Respondent's position in respect of the sex discrimination/harassment claims; and***
 - 4.3 ***confirmation, in one document, of the Respondent's position in respect of the other claims (which is currently set out in multiple letters).***
- 5 It is helpful to set out the chronology of the claims to put these orders into context. On 3 June 2018 both Claimants presented separate claim forms claiming redundancy pay and notice pay. On 8 June 2018 Ms Vaughan presented a claim to the Tribunal for sex harassment. On 13 June 2018 Ms Smith presented a claim to the Tribunal also alleging sexual harassment. The claims were sent to the Respondent at his home address. A preliminary hearing was listed for 29 August 2018.
- 6 On 14 July 2018 the Respondent wrote a letter to the Tribunal purporting to give information about notice pay, minimum wage and redundancy payment in relation to both Claimants. The prescribed form was not used. This resulted in the hearing on 29 August 2018 being vacated and the files being referred for a rule 21 summary judgment.
- 7 On 21 October 2018 the Claimants wrote to the Tribunal in relation to claim members 2302073/2018 and 2302075/2018. This was followed up on 6 November 2018 and

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again on 22 November 2018. The matter was then referred to Employment Judge Andrews who responded on 6 December 2018 to the Respondent. In this letter all four claims numbers were identified and it stated:

“Although it is noted that you deny having any personal liability in these claims, the Employment Tribunal Rules of Procedure 2013 require that if you deny liability because you say you are not the employer of the Claimants, you must state that on the prescribed form i.e. the response form also named as an ET3. If that is not done, you are liable to have a default judgement(s) entered against you.

ET 3’s have previously been sent to you but another copy in respect of each claim is now enclosed and an extension of time for you to complete and return them has been ordered until 14 days from the date of this letter.”

- 8 The prescribed form was sent to the Tribunal on 11 December 2018 citing all four claim numbers. Much of the form was not completed and the grounds of resistance said ***“I’m not the legal employer as confirmed previously by ACAS and HMRC. My position within the club was always a secretary. Please supply copies of claim numbers to 30221/18 and 232165/2018 as I have no record of ever receiving these. I am willing to attend the Tribunal hearing at your convenience, however I will only be able to answer any questions on this matter in the capacity of secretary”***. This led to a preliminary hearing being listed for 28 March 2019 before Employment Judge Corrigan which is referred to above. The Respondent did not comply with paragraph 4 of Judge Corrigan’s order.
- 9 The Claimants withdrew their claims the non-payment of national minimum wage on 10 June 2019.
- 10 As at the date of this hearing the Respondent has not provided any details whatsoever of the Claimants claims of sex discrimination and harassment. The only defence was to the other claims in that he simply said is that he was not the Claimant’s legal employer.
- 11 At this hearing I heard from Mr McNamee who represents the Claimants and from Mr Stacey is the named Respondent and who was accompanied by his daughter. The Respondent produced a witness statement and other documents which included references to communications which ACAS and consequently these documents were returned to the Claimant and not considered by the Tribunal.
- 12 At the hearing I went through each of the issues identified from the order of Judge Pritchard and ensured I heard in full from both parties.
- 13 The Claimants submitted that after the canteen was closed, they sought advice from the Citizens Advice Service and attempted to resolve their problems with the Respondent by sending letters dated 30 April 2018 to Mr Stacey’s home address. The letters were returned to them with a handwritten note stating: ***“return to sender not at this address”***. Mr Stacey confirmed that this hearing that the writing was his handwriting. It is a feature of this case that Mr Stacey claims not to have received papers which were sent to his address (and correctly addressed). When asked about this during the hearing that he said received correspondence about the canteen after it closed and would return it is as not known at his address.
- 14 In one letter to the Tribunal the Respondent said that ***“if the Claimants had problems***

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making a claim to the government they should have approached me for assistance...". The Claimants pointed out that this was what they were trying to do in the letters of 30 April 2018 and that the Respondent's position here is disingenuous.

- 15 Mr Stacey also commenced County Court proceedings against both Claimants referring directly to the claims that they brought in the Employment Tribunal. In a letter titled "***LETTER BEFORE ACTION***" dated 10 August 2018 he states that he is seeking compensation:

".....to the amount of £1500 in relation to the numerous attempts you have been making in trying to extort money from me by making fraudulent claims to ACAS and HMRC and now the employment Tribunal service.

You are aware that ACAS have already confirmed that I'm not your legal employer... The continual harassment isn't causing the unnecessary stress and I find myself spending my time can corresponding unnecessarily with the various organisations who seem to be contacting with your fraudulent allegations and attempt to extort money from me..... You have 14 days from the date of this letter to make a payment of £1500 to myself. Failure to make this payment within 14 days will result in this claim being referred to the Small Claims Court for resolution".

Claims were brought in the County Court which were subsequently dismissed.

- 16 The tone of correspondence from Mr Stacey to the Claimants and the Claimant's representative Mr McNamee, was intemperate. This intemperate tone and manner was evident before me at this Tribunal. At this Tribunal Mr Stacey accused Mr McNamee of sending communications to him over a weekend or in the evening alleging he had sent them after he had been in the pub and was drunk. These were inappropriate comments without any basis or substance.
- 17 The Tribunal has looked through the correspondence in the bundle and whilst Mr McNamee's communications to Mr Stacey are firm there is nothing improper in them. In many of the communications Mr McNamee is attempting to assist Mr Stacey in understanding various processes in both the Employment Tribunal and in the County Court. Regrettably, rather than engaging with the Tribunal process Mr Stacey has sought a trial by correspondence resulting in a deterioration in the communication between the parties such that on 18 October 2018 Mr McNamee wrote on behalf of the Claimants:

"We have received your letter dated 17 October and will not be commenting further suffice to say any more demands for money from either of my clients will be referred to the police.

Any further for clay-court clothes will be referred to the police for harassment. You've been given the same information twice.

All of your letters and Co and the County Court claim will be presented to the Employment Tribunal remedy hearing in support of their claims".

- 18 Mr Stacey continued to correspond directly with the Claimants (despite them being represented by Mr McNamee, again adopting a hostile tone. In one letter dated 7 November 2018 Mr Stacey wrote "***I'm very confused in reading your letter dated 6***

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November 2018 you were supposed to be a person who has received legal training or was this letter just composed by cleaner its, just a load of waffle possibly to pad out the letters to justify your fee, my solicitor also agreed with me”.

- 19 At the start of this hearing I asked Mr Stacey if he had taken legal advice as suggested in the order of Judge Prichard to which he had said he had not. This letter refers to him having a solicitor (***“my solicitor”***) yet when asked about this he said it was someone he knew with legal training but not a solicitor he had instructed.
- 20 The Respondent has failed to disclose documents to the Claimants as had been ordered. There was no disclosure of any accounting records, tax information or bank accounts. There is reference in the bundle to some bank statements being available, but they were not disclosed. When asked about this Mr Stacey said that there may be documents in a cupboard at the garage or somewhere. There was no indication that he had attempted to locate them.
- 21 There was an issue between the parties about wage slips. There are two versions of the same payslip in the bundle which are different. These are photocopies and the original payslips were not available. Mr Stacey said that this proof that the Claimants had lied and had fabricated the document. However, I pointed out it could equally indicate that Mr Stacey had altered the document and therefore I remained neutral on this document as it did not help me one way or the other.
- 22 The most fundamental issue for me to determine at this hearing is whether the Respondent was the Claimant’s legal employer. Mr Stacey’s position was he was just the Secretary of the canteen and not the employer. The operation is a canteen at a Stagecoach bus garage which is operated by a group of people of which the Claimant was the Secretary, there was a Chairman and a Treasurer. Both Claimants were employed and in the bundle was a written statement and terms and conditions of employment. This refers to the employer’s name as “East Kent Drivers Canteen”. This is quite clearly an employment contract setting out holiday entitlement, sick leave entitlement, and disciplinary procedures. Notice periods are given that after the probationary period the employee is required to give four weeks’ notice.
- 23 The canteen was funded by drivers paying £1.50 per week but ultimately closed because of competition from fast food outlets nearby. When it was closed, Mr Stacey offered the canteen to Mrs Vaughan as ***“a business”***. Mr Stacey resiled from this at the hearing say he did not mean it is a business in the ordinary sense of the word.
- 24 After the Claimants had brought their claims, they became aware of various posts on Mr Stacey’s Facebook account. There are six pages of these posts in the bundle. The posts included:
- ***“people who live in a glasshouse shouldn’t throw stones benefit fraud department will be paying you a visit better get 210 answers ready”***
 - ***“Hope this slag gets nicked”***
 - ***“to the woman who is trying to stitch me up got a meeting on Wednesday that should be getting your £210 knock on the door ha ha ha”***
 - ***“just had a letter from ACAS the to 20 try to stitch me up has been chucked out***

through lies ha ha ha”.

- *“To me I think hope she’s got her bags packed for her stay at the HMP hotel”*
 - *“shut the canteen down as had no money coming in as the wages were too high the midget and the other slag tried to stitch me up with ACAS but it was chucked out ha ha ha. I will be in touch with the benefits ha ha ha take care”*
 - *“those two slags who worked in the canteen tried to stitch me up with ACAS but it was chucked out ha ha ha”*
- 25 Mr Stacey’s told me is that he was not naming anybody and therefore the Claimants could not say it was about them. However, he confirmed that only the two Claimants and one other worked in the canteen and only the Claimants had been to ACAS. The Tribunal find it disingenuous for him to say that these messages did not refer to the Claimants to say it could not reasonably be inferred that they referred to the Claimants.
- 26 I first considered the organisation of the canteen to see if it was an unincorporated association able to employ staff. The canteen has a management structure with a Secretary, Treasurer and Chairman. There is a formal statement of particulars of employment between the Claimants and the Respondent. The Claimants took instruction from Mr Stacey even though, as they had been employed by some time, they were able to self-manage to some degree. They were answerable to the management group for expenditure and organisation and the carrying out of their duties. The Canteen was funded by drivers paying £1.50 per week.
- 27 The Claimant has submitted that the Respondent is an organisation run for profit and not an unincorporated association. The Respondent says it was no run for profit.
- 28 Clearly this organisation did enter into a contract of employment with the Claimants. The document is a formal document and it is therefore inferred that advice was taken. The Claimants were employed to work fixed hours at a fixed salary. There is no mention of them being volunteers or having any other status other than an employee.
- 29 I am satisfied that this was an association which was run for profit and that Mr Stacey is an officer of this association. He is jointly and severally liable together with the Chairman, Treasurer and all drivers who paid £1.50 per week to the association.
- 30 No response was received to the claims for post-termination sex discrimination (case numbers 2302165/18 and 2302221/18) judgment in favour of the Claimants is given under rule 21 of The Employment Tribunal Rules of Procedure 2013. No response was received and the Respondent was given addition opportunity to defend these claims by the order of Judge Andrews but failed to do so. Remedy will be determined in a separate hearing.
- 31 I have also considered Whether or any part of the Respondent’s responses to the claim’s claims for redundancy payments, notice pay, and sex discrimination should be struck out under rule 37(1) (a), (b) and/or (c). Rule 37(1) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules") gives an Employment Tribunal the power to strike out all or part of a claim on various grounds, including where it has no reasonable prospect of success, failure to comply with orders and the manner in which proceedings are conducted are unreasonable or vexatious.

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- 32 Having found that the Respondent is the Claimants legal employer and that the Canteen closed because of competition there is no reasonable prospect of the Respondent defending the Claimants claim for a redundancy payment. The Tribunal therefore strikes out this part of the Respondent's defence and gives judgment for the Claimant. The amount of the redundancy payment will be determined at a separate remedy hearing.
- 33 Similarly, having found that the Respondent is the Claimants legal employer the Respondent is liable to the Claimants for payment of notice pay. No notice pay was given. The amount of the notice pay will be determined at a separate remedy hearing.
- 34 Again, having found that the Respondent is the Claimants legal employer the Respondent is liable to the Claimants for payment of holiday pay. Holiday pay was not paid on termination of employment and the Tribunal gives judgment in the Claimant's favour in respect of holiday pay. The amount of holiday pay will be determined at a separate remedy hearing.
- 35 As Mr Stacey is jointly and severally liable together with all members of the association he is ordered within 14 days of this order being sent to the parties to provide the names and addresses of all members of the association (this includes the Chairman, the Treasurer and all those contributing to the finances of the association). Failure to do this will leave Mr Stacey solely liable for this judgment.**

Employment Judge Martin
Date: 13 November 2019