



EMPLOYMENT TRIBUNALS

Claimant
Mr S Barber

v

Respondent
Brewer and Jackson Homes

Heard at: Cambridge

On: 24 February 2020

Before: Employment Judge K J Palmer

Appearances:

For the Claimant: In person

For the Respondent: Mr S Brewer, Partner

JUDGMENT having been sent to the parties on 12 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This matter came before me today and is in most ways a very unusual case.
2. The Claimant issued a claim in an ET1 which was home made. On the face of it no response was forthcoming from the Respondent who are a Partnership and accordingly, Employment Judge Johnson entered a Liability Judgment under Rule 21.
3. A date was then fixed for a Remedy Hearing which was today before me.
4. Very early on in the process, which was attended by both the Claimant and Mr Brewer the Lead Partner in the Respondent, it became clear that the Claimant's claim was a claim for the Respondent to remit PAYE on the Claimant's behalf to HMRC.
5. Apparently, the history of the matter is that the Claimant has worked for the Respondent on and off from 1 April 1986 and continues to do so. Prior to about 2012, the Claimant was treated as an employee and appropriate PAYE sums were remitted to HMRC by the Respondent. He was paid a net sum in usual way thereafter.
6. Apparently, after the intervention of the Respondent's accountants, post about 2012, the Claimant was simply paid the net sum that he would have been paid and received had he been an employee and Mr Brewer continued

to retain all PAYE on behalf of the Claimant.

7. It would appear that both the Claimant and the Respondent are now in discussions with the Revenue and the Respondent is more than willing to treat the Claimant as an employee. He confirmed to me that he had retained all the PAYE Tax and National Insurance and was willing and able to remit it to the Revenue, but the Revenue were, I understand through the Respondent's accountant, seeking to regard the Claimant as self-employed.
8. It became quickly very clear that the Tribunal has no jurisdiction to entertain a claim where the claim is that the Respondent pay PAYE to HMRC. There is a specific exemption from the legislation under Section 13 of the Employment Rights Act 1996 where the payments in question are statutory payments due to a Public Authority. In the case of Patel v Marquett Partners (UK) Ltd. [2009] IRLR 425, considered this.
9. It became very clear to me that therefore I had no jurisdiction to deal with the Claimant's claim and it is a matter for both the Respondent and the Claimant, probably with advice from an accountant, to contact the Revenue and seek to resolve the matter.
10. I therefore have no alternative but to strike out the Claimant's claim.
11. For the avoidance of doubt, I set aside the Judgment of Employment Judge Johnson and strike out the Claimant's claim. It is dismissed.

Employment Judge K J Palmer

Date: 23 April 2020

Judgment sent to the parties on

1 May 2020

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For the Tribunal office