



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4118256/2018

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Held in Glasgow on 23 April 2019

Employment Judge: David Hoey (sitting alone)

10 **Mr A Smillie**

**Claimant
Not Present and
Not Represented**

15 **ABECC Limited**

**Respondent
Represented by:
Mr A Brownlie -
Director**

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RECONSIDERATION JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The respondent's application for reconsideration of the Judgment dated 11 December 2018 entered on the register on 17 December 2018 is successful. The respondent's designation is therefore changed to KVR Compliance Limited (in liquidation) care of Scott-Moncreeff, Chartered Accountants, Exchange Place 3, Semple Street, Edinburgh EH3 8BL.

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REASONS

1. This case called as a reconsideration hearing following an application on behalf of the respondent. At the Hearing the respondent was represented by Mr Brownlie. The claimant was not in attendance. I asked my clerk to telephone the claimant to ascertain whether or not he intended to attend. The Notice of Hearing had been issued to both parties. A message was left with the claimant and a call back was sought but no response was received. I decided that the hearing would proceed in the absence of the claimant following a reasonable period of time having passed.

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E.T. Z4 (WR)

The issues

2. The hearing began by summarising the position to date. The claim had been lodged against KVR Compliance Electrical Testing Services Limited. No response had been lodged by that respondent.
- 5 3. At the hearing to determine the issues only the claimant attended. Evidence was led by the claimant which suggested the claimant's employer was ABECC Limited (the new name of KVR Compliance Electrical Testing Services Limited). It was in the interests of justice to amend the respondent's designation to reflect the correct legal entity which appeared to be the
10 claimant's employer.
4. Following receipt of the Judgment, the respondent applied for a reconsideration on the basis that ABECC Limited were never the claimant's employer. Mr Brownlie had sent to the Tribunal (and the claimant) documents that purported to show ABECC was never the claimant's employer and KVC
15 Compliance Limited was the claimant's employer (and had been for the duration of the claimant's employment). The claimant had submitted emails which appeared to show him being instructed by Mr Brownlie on behalf of KVC Compliance Electrical Testing Services Limited.
5. Mr Brownlie gave evidence and referred to a number of productions that he
20 produced (some of which the claimant had produced at the hearing). I find the following facts proven on the balance of probabilities.

Findings in fact

6. The claimant entered into a contract of employment with KVR Compliance Limited.
- 25 7. The claimant worked for KVR Compliance Limited for the duration of his employment.
8. Mr Brownlie was the director and founder of KVR Compliance Limited (and line manager of the claimant). He also set up a separate company, KVR Compliance Electrical Testing Services Limited. Both companies were
30 separate and carried out separate works.

9. On occasion Mr Brownlie would email the claimant to provide him with instructions. Mr Brownlie's email signoff would state 'KVR Compliance Electrical Testing Services Limited'. That sign off was not an indicator that the claimant's employer had changed. It was not a formal instruction on behalf of another company. It was an instruction by Mr Brownlie who was also a director of KVR Compliance Limited.
10. The claimant continued to be employed by KVR Compliance Limited at all times during his employment. The claimant did not work for KVR Compliance Electrical Testing Services Limited (which became ABECC Limited).
11. KVR Compliance Limited paid the claimant for work done and the wage slips reflected this.
12. Correspondence sent to the claimant, such as a letter in relation to a disciplinary matter dated 29 June 2018, all had KVR Compliance Limited as the claimant's employer.
13. HMRC communications also had as the claimant's employer KVR Compliance Limited.
14. There was no other connection between the claimant and KVR Compliance Electrical Testing Services Limited, aside from the emails the claimant received from Mr Brownlie which were occasionally sent emails from his KVR Compliance Electrical Testing Services Limited email account.
15. The claimant was never employed by ABECC Limited (nor KVR Electrical Testing Services Limited). The claimant's employer throughout the duration of his employment was KVR Compliance Limited.
16. The claimant made a claim for the sums due to him in this matter as part of the liquidation of KVR Compliance Limited.

Observations on the evidence

17. I do not consider any of the points made above to be controversial from the claimant's perspective. The claimant himself produced the contract of

employment and some of the other documents relied upon by Mr Brownlie (which show KVR Compliance Limited as his employer).

18. The claimant's main contention at the Hearing was that he was instructed by Mr Brownlie who appeared to be instructing him via ABECC Limited and that as a result ABECC Limited had become his employer. That was explained by Mr Brownlie.
19. There were no other evidential links to ABECC Limited.
20. I am satisfied that Mr Brownlie was truthful. He presented as a reliable and credible witness. I put the points to Mr Brownlie which had been established at the original hearing (together with the correspondence the claimant had sent to the Tribunal) and he answered those questions candidly.

Decision and Reasoning

21. In all the circumstances, it is necessary and in the interests of justice to grant the respondent's application to change the name of the respondent from ABECC Limited to KVR Compliance Limited (in liquidation).
22. From the evidence that was presented, it is clear that KVR Electrical Testing Services Limited (which became ABECC Limited) did not employ the claimant at any time. Whilst the claimant may have understood that there was a connection between both companies because of the email signature within Mr Brownlie's emails, that connection did not result in his employer changing.
23. Mr Brownlie accepted the emails he sent to the claimant had his KVR Electrical Testing Limited sign off but that did not alter the identity of the claimant's employer. I accepted his evidence in that regard. At all times the claimant's employer was KVR Compliance Limited.
24. It is necessary and in the interests of justice to amend the respondent's details to ensure that the correct entity is set out as the claimant's employer.
25. In all the circumstances therefore, this reconsideration application is granted and the Judgment of the Employment Tribunal is that the respondent's name be changed to KVR Compliance Limited (in liquidation) care of Scott-

Moncrieff, Chartered Accountants, Exchange Place 3, Semple Street,
Edinburgh EH3 8BL.

Employment Judge:

David Hoey

5 Date of Judgement:

23 April 2019

Entered in Register,

Copied to Parties:

02 May 2019