EMPLOYMENT TRIBUNALS

Claimant
Mr Daniel Hart

Respondents
Birmingham Neoglory Ltd (R1)
Ms Karen Price (R2)
Ms Linda Zhang otherwise known as Linda Xiong (R3)

EMPLOYMENT JUDGE GARNON
MADE ON 20 APRIL 2020

JUDGMENT ON A RECONSIDERATION APPLICATION (without a hearing}

Under Rule 72 (1) of the Employment Tribunal Rules of Procedure 2013 ("the Rules"), I refuse the first and third respondents' application for a reconsideration of a unanimous judgment made at a hearing on 2 August 2019 before myself and members Ms A. Tarn and Mr S. J. Li ("the Judgment"), because I consider there is no reasonable prospect of the original decision being varied or revoked.

REASONS (bold print is my emphasis and italics quotations)

1. Both respondents apply for a reconsideration of the Judgment which they appealed. His Honour Judge Barklem stayed the appeal by an Order sealed on 16 March to give them opportunity to make this application out of time by 6 April. They did so by this email:
Dear Court Manager,
We represent the first and third Respondent in the above mentioned case.
Please find attached Application for extension of time & reconsideration, further to HHJ Barklem's order of 24/02/20.
We confirm that the above application has been sent to the Claimant and second Defendant by email, and the hardcopy will be served on them by post later today.
Regards,
Dingyue Shi
Practice Manager
Legis Chambers
Fitz Eylwin House
25 Holborn Viaduct
London
EC1A 2BP

2. The Rules include
70. A Tribunal may, .. . on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72. (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

3. Rule 2 provides the overriding objective of the Rules is to enable Employment Tribunals to deal with cases fairly and justly. Under the Rules, the only ground for a reconsideration is whether one is necessary in the interests of justice. That means justice to both sides and other litigants. During the Covid19 pandemic, Tribunals and parties have to adapt. I am working from home and do not have the paper file. I have had to convert some documents from pdf to Word in order to copy and paste them into this one, so there may be minor inaccuracies. Rule 86 says documents may be delivered to a party by post, direct delivery or electronic communication. It was not earlier said documents went astray. At all **material** times the first and third respondents were represented by Legis Chambers.

4. The written reasons for the Judgment ("the reasons") set out what HH Judge Barklem in his reasons described as "*a tangled procedural history*" of attempts to establish the correct names and addresses of all three respondents, which I need not repeat in full. In the application the main point is the respondent's claim they did not realise a hearing was taking place on 2 August 2019. Had that been so, I am mystified as to why respondents, represented by Counsel, did not apply for reconsideration rather than appeal. The application attached to the email in paragraph 1 above has this introduction:
The Respondents R1 and R3 seek an extension of time to comply with the requirements of the order of HHJ Barklem of 16 March 2020 [LZ1, page 1-3], made at the Employment Tribunal under the potential appeal number UKEATPA/0984/19/VP. The Respondents, R1 and R3 in this appeal number 2501176/2018, seek a reconsideration of the Tribunals judgement dated 2 August 2019. R1 and R3 have appealed against the decision of 2 August 2019. Due to the lockdown under the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, Chambers is staffed only on a limited basis, whereas every attempt is made to comply with orders and deadlines, there has been on this occasion a minor slippage with compliance.
The Tribunal is invited to grant an extension of time.
I would not refuse this application on the ground it was not made in time. I have been an Employment Judge for 23 years and in all that time neither I, nor any Employment Judge I

have known, would try a party in their absence unless and until he or she was satisfied all efforts had been made to get them to attend. If at any later stage it appeared there had been some clerical error by Tribunal staff, I would always grant an extension of time.

5. HH Judge Barklem's reasons clearly identify the primary ground for reconsideration as the respondents not realising a hearing was taking place, but he also mentioned the respondents' assertion they had " *no contractual relationship with the claimant*" . I have never suggested the second or third respondents did. Their liability was as agents of the first respondent. Plainly, payslips the respondents produced showed the claimant was at all material times employed by the first respondent. Point 1.2 of the reasons included : *A response form, due by 18 July, arrived on 17 July* ***signed by R3*** *and Mr Yan Wang as Director of R1* ***attaching payroll documents relating to C.*** *It did not answer the harassment claim but denied dismissal which was not claimed. It says R1 and R3 need not consult solicitors because it was a very easy case".* More importantly for today's purposes, the existence of that employment relationship and the agency relationship between the second and third respondents on the one hand and the first on the other was not decided as part of the Judgment but by an earlier judgment made by me, sitting alone, on 4 June 2019 sent to the parties on 5 June, receipt of which this application confirms. That judgment has never been appealed and I am not being asked to reconsider it. I reproduce it in full in the Appendix as it contains many points which show why I decided as I did on matters the respondents now seek to challenge by this application and in the appeal.

6. The main points of the application, which I reproduce below, are shown in bold

Application for Reconsideration
3. R1 and R3 seek reconsideration on the following grounds:
(i) *R1 and R3 rely on their joint Grounds of Resistance. R1 and R3 jointly and severally join issue with the assertions and allegations that the Claimant has advanced in support of his claim, namely that he was harassed and or discriminated against.*
(ii) *R1 and R 3 both jointly and severally contend that the Claimant's case does not have a realistic prospect of success*
(iii) The Claimants case is not credible, nor is it supported by credible evidence.

4. R1 and R3 have always contested the Claimant's assertions and ***would have attended the trial had they had the opportunity to do so****.*

5. R1 and R3 contend they did not have a fair trial, dated of 2 August, which is in breach of section 6 Human Rights Act 1998, or otherwise irregular, including for the following reasons:
a) ***The Claimant failed to comply with the 5 June 2019 to contact R3 to agree on a suitable hearing date. The Claimant has not provided a good reason for why he failed to comply with that requirement. The Tribunal's response does not refer to the order of 5 June 2019 requiring the Claimant to contact the Respondents to agree on a hearing date. There was no agreement on setting the 2 August 2019 as a hearing date. Even the notice is not definitive of the date of the hearing reading as "the claim will be heard on 2/8/2019 (on that day) or as soon after that…"***

b) ***On 2 August 2019, R1 and R3's representative through a telephone to the Tribunal learnt that the hearing had concluded. R1 and R3's representative was trying to obtain a date at what he thought was the start of a window for the hearing***

c) The Claimant failed to agree a hearing bundle with R1 and R3.

*d) The Claimant **submitted evidence which he had not served on R1 and R3**. R1 and R3 were denied an opportunity to challenge the evidence which was presented to the Tribunal. Such evidence is still not served to date.*

*e) The fresh evidence of Ms Amanda Tilney **over the telephone at the trial** undermines both the Claimant's evidence and her own previous evidence [LZ1, page 12-13]. The Tribunal gave no reason for disregarding Ms Tilney's evidence. No reason is given as to why the witnesses did not attend or respond to the witness order earlier [LZ1, page 18].*

*f) The Tribunal has wrongly concluded that R3 should be jointly liable with R1 and R2 to the Claimant. There is no legal basis for the decision. **R3 was neither an employee nor an agent but a provider of services as a consultant.** R3 did not have any contractual arrangement of employment or agency with C, and it was not open to the Tribunal to make such a finding of liability against her. R3 has set out in detail in her witness statement the relationship between her and R1.*

*g) The evidence referred to in the judgement at 1.9 [LZ1, page 16], including the Claimant's bank statements **and or payslips** is evidence which the Claimant has not disclosed to the Respondents. **The Respondents could not respond to the same. The issues raised are severe, and the Respondents should be permitted to address the same. R3 has not been known as "Xiong".** Xiong Neoglory Ltd is an entirely different entity, but not R3 in any event, and Mr Xiong Wang is its director. The reference to **Yan Wang as being R3's husband factually wrong. Yan Wang is a female** and is not married to R3 [LZ1, page 17]. In her witness statement [LZ1, page 21-25], R3 explains who Ms Yan Wang is. **The Tribunal fell into error in its research. R3 is married to Mr Shaoan Chen and is otherwise known as Phil.***

*h) Any findings of joint liability based on a contractual **or agency** relationship between R1 and R3 are rejected and not supported by the evidence.*

i) R2's address is a result of mispronunciation rather than an attempt to mislead.

*j) R3 does not have a contractual relationship with the Claimant and is **not an agent** or employee of R1 **but acted as consultant** to R1.*

k) The Tribunal had no reason or evidence before it to conclude that R1and R3 were in any way trying to obscure the identities or addresses. The fact is that the Claimant misidentified and misspelt parties' details on correspondence to the Tribunal. Details of R1 are publicly available, and R3 was wrongly identified and had at the first opportunity adequately identified herself. Any confusion is purely due to the Claimant failing to determine who were purported parties to be sued.

l) R1 and R3 rely on the grounds of resistance and the witness statement of Ms Meng Zhang (Linda Zhang) [LZ1, page 21-25]. R1 and R3 have neither harassed, caused to be harassed or allowed the Claimant to be harassed in any way. R1 and R2 have neither

discriminated against or created or allowed discrimination on whatever to or against the Claimant.

6. In the premises, the hearing on 2 August 2019 was not fair and was procedurally irregular and the decision emanating from that hearing ought to be revoked. A new hearing date should be set down. R1 and R3 made representations to the Tribunal on 12 August 2019 by email [LZ1, page 4]. ***The Tribunal's response [LZ1, page 5-9] was that a notice setting down the date had been sent out on 25 June 2019 by email. Neither R1 nor R3 has received such notice by email.***

7. In the premises, it would be in the interest of justice to extend the time to reconsider the final decision and to revoke the same.

Statement of Truth
I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
Linda Zhang

14th April 2020

7. I do not know what is meant in paragraph 5 a) by "*failed to comply with the 5 June 2019 to contact R3 to agree on a suitable hearing date*". There is no requirement for parties to agree a hearing date, though sometimes the Tribunal invite them to give unavailable dates. The bigger issue is the last sentence. Notices of hearing are a standard form letter adopted nationwide. They are adapted by a Tribunal clerk filling in "blanks "and deleting certain options. When I read "***the claim will be heard on 2/8/2019 (on that day) or as soon after that…"*** it looked as if a clerk had erroneously failed to insert **the time of** hearing and, though it would surprise me a lawyer would not realise the mistake and ask for clarification , I was of the view I would grant this application. However, out of caution I asked the Notice of Hearing be scanned and sent to me. It reads:

Employment Tribunals Rules of Procedure 2013

The claim will be heard by an Employment Tribunal at 2nd Floor Kings Court, Earl Grey Way, Royal Quays, North Shields, Tyne and Wear, NE29 6AR, on Friday, 2 August 2019 ***at 10:00 am (on the first day] or as soon thereafter on that day*** *as the Tribunal can hear it. The tribunal may transfer your case at short notice to be heard at another hearing centre within the region.*
If you are affected by this order you may apply, in writing, to have any part of it set aside, varied or stayed by 14 days aner the date of this notice.

Unless there are exceptional circumstances, no application for a postponement made after 14 days from the date of this order will be granted.

The emboldened words differ markedly from those in the application and the meaning is different. The actual version is a standard wording which permits for different start times on different days of multi day cases and for a tribunal, for whatever reason usually the judge having a short hearing before the one in question, to start later than 10 am. The application

claims the respondent's representative did not know there was any hearing **on that day** but ***was trying to obtain a date at what he thought was the start of a window for the hearing*** . This is not a conclusion they could have drawn from the Notice of Hearing

8. As for point c) I am not aware of a requirement to agree a bundle, but if there was the claimant's failure to do so does not explain or excuse the respondents doing nothing to notify the Tribunal of an alleged breach, still less not attending.

9. As for points d) and e), I dealt fully with Ms Tilney's non attendance, despite a witness order, at paragraphs 1.10 and 1.11 of the reasons .Paragraph 3.1 reads
Daniel George Jason Hart ("C") gave evidence on affirmation. Ms Tilney did not attend but we read her written ***signed witness statement which had been produced and sent to the respondents much earlier****, and questioned C about the content of her emails. He explained Ms Tilney had left on 24 December 2017 not in November, when he started as part-time help for the shop. On Christmas Eve, no staff including Ms Tilney attended to open the shop. It is a rule of the Metrocentre landlords that all shops must have a manager on site. R2 contacted C on his day off and he came in to open the shop, for which R3 later thanked him by telephone. From then until late January, C was acting manager of the shop. It was only then Ms Carol Thorpe arrived. After C had given had two days training R2 made her the manager and demoted him to assistant manager. We are entirely satisfied Ms Tilney was present until 24 December. We asked C whether he wished any steps to be taken against her with regard to her disregard of the witness order, and more significantly that she did not make any contact with the tribunal or him until as late as she did, despite having had the witness order for a week. The claimant did not wish any steps to be taken against Ms Tilney because he believed her non-attendance, though deliberate, was due to her being afraid of having to confront R3, who could have attended today.*
If the respondents had not seen her statement, they never informed the Tribunal and again it does not explain or excuse them doing nothing to notify the Tribunal of an alleged breach, still less not attending. No-one spoke to Ms Tilney *"over the telephone at the trial".*

10. As for point f), the first part of g), and h), these matters were decided on 4 June at a hearing (i) of which the respondents had notice, (ii) failed to attend , (iii) were sent full reasons and (iv) did not question at the time. As for the second part of g), I now accept Yan Wang is female. The sentence "*The Tribunal fell into error in its research."* presupposes it was conducting "research" which it was not. I explained at paragraph 1.3 of the reasons the limited purpose of making a company search was to check we did not take steps against a company which has been dissolved or is in compulsory liquidation or administration. In this case one showed the sole director of R1 Yan Wang. Had I been conducting "research" I would have opened the documents filed by the company, and seen Yan Wang was female. It was the claimant who said he **thought** Yan Wang was the claimant's husband. The point was not material to the decision. The company was then shown as "active" and still is, but its accounts to 30 June 2020 were due to be filed by 31 March 2020 and are overdue.

11. As for points j) k) and l), we made a finding of fact based on the evidence we had the existence of which was fully pleaded and discussed at a hearing where the third respondent was present with her lawyer, Mr Khan, on 13 December 2018. In paragraph 1.7 of the reasons I wrote" *When this claim was presented the name of R3 was stated by the claimant as Linda Xiong. As Mr Khan requested, Employment Judge Garnon ordered the spelling of her surname, in the characters of the British alphabet ,to be amended to Zhang . A letter to the claimant dated 7 September 2018, copied to the Tribunal is signed "* ***Linda Zhang On behalf of Birmingham Neoglory***". I see no logic in the assertion that because

Ms Zhang was a consultant, she cannot be an agent. As for the spelling of her name, one of the members at the hearing speaks fluent Mandarin and said he may have been able to clarify spelling in English had he seen the Chinese characters. None of this was material to the decision and does not explain non attendance.

12. Point 6 is the first suggestion I have seen that the email enclosing the notice of hearing did not arrive. I asked the file be checked. The notice was emailed on 25 June at 10.19 to email addresses which I have checked are those of Ms Zhang and Legis Chambers. HH Judge Barklem's reasons identify the primary ground for reconsideration as the respondents not having had Notice of Hearing. That ground is simply untrue. The remaining points are either untrue or irrelevant. The only ground for a reconsideration is whether one is necessary in the interests of justice. It is not in the interests of justice to reconsider on the basis of assertions of irregularity and breaches of the Convention rights to a fair trial which on examination prove to be groundless. Had there been evidence to support the allegations which caused HH Judge Barklem to stay the appeal to allow for a reconsideration application, I would willingly have reconsidered and arranged for the decision to be taken afresh by a different panel . There is no such evidence.

Employment Judge Garnon

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 21 April 2020

APPENDIX

JUDGMENT (on a Preliminary Issue) AT A PUBLIC PRELIMINARY HEARING

HELD AT NORTH SHIELDS ON 4 June 2019
EMPLOYMENT JUDGE GARNON
Appearances
Claimant: in person
For R1 R2 and R3 no appearance

JUDGMENT

All three respondents will be liable to the claimant for such contraventions of the Equality Act 2010 (EqA) pleaded in his claim as are proved.

REASONS

1. Following a private preliminary hearing held on 13 December 2018, I set out in written orders the procedural history of the claim which I need not repeat in full . In short, the claimant (C) was employed by R1 from 25 November 2017 to 3 February 2018 . He worked at a shop called "Amon" ("the shop") which sells handbags and other accessories in the Gateshead Metrocentre, a large shopping centre . His claim is of harassment under the EqA Its essence is that he was harassed by comments made to him to the effect he was only to hire shop workers who were female or gay men and not to hire anyone who was non white. His claim form refers to comments made by "*my employer*" specifically one to the effect "*coloured people are considered lazy smelly dirty bastards*". The claim form originally named Amon as the second respondent.

2. The claim was served for all three respondents on 20 June together with the notice of a preliminary hearing. On 17 July an emailed response from R1 was signed by " ***Linda Zhang on behalf of Birmingham Neoglory*****". It enclosed payslips for the claimant from Birmingham Neoglory Ltd .**

3 . Employment Judge Johnson spotted Amon appeared to be only the name of the shop. On 15 August at a preliminary hearing where no respondent attended, he joined a Ms Karen Price as R2 in substitution for Amon . He also made an order for further particulars to be provided by C by 31 August. C's reply enclosed a manuscript 3 page statement of Ms Amanda Tilney the ex manager of the shop who left just before Christmas 2017. Employment Judge Johnson ordered a revised response. An email on 10 September again signed "*Linda Zhang on behalf of Birmingham Neoglory*" referred to" *our barrister Mr Naz*". A revised response arrived on 27 September, professionally drafted by Mr Nazar Mohammad. At paragraphs 3 to 4 its answer to the harassment claim is a denial that anyone for whose acts R1 is responsible told the claimant what is alleged. R2 was served on 26 October at an address c/o R1. No response arrived from R2. When the file came to the attention of Employment Judge Johnson he made an order R1 and R3 confirm whether R1 employed R2. By email they denied it did. Employment Judge Johnson had listed the claim for a one-day full merits hearing on 13 December but in light of the information which had come in, he converted that to a preliminary hearing which I conducted.

4. I now set out a brief summary of C's case

(a) On 24 November 2017, C did a trial for employment at the shop. Amanda Tilney, said that on 25 November 2017 she was told by R2 to tell R3 that C was gay as R3 does not like men working in the shop unless they are gay. Ms Tilney says in a later telephone conversation between herself and R3 , R3 asked if C was gay to which Ms Tilney replied he was, and then R3 said " *Ooo good, the boy seems OK* ". The claimant was informed of this conversation about three days later by Ms Tilney.
(b) In the week of 18 December 2017, R2 told C in a face to face conversation R3 was not to find out he was bisexual as she would not be able to process this as she was only happy for gay men to work in the shop.
(c) On 25 January 2018 R2 told C by telephone to hire a new staff member but not men who were not gay as R3 said women and gay men are more qualified for the positions. He found this offensive and being bisexual himself it made him feel he was being judged on his sexuality and not the job he could perform.
(d) On 31 January 2018 by telephone R2 told C not to hire a person of ethnic origin as they are considered " lazy smelly dirty bastards " . Other staff were offended by these remarks .If the claimant, who is white, male and bisexual was offended by the instructions he was allegedly given, he has a good claim of harassment. The harder question is against whom?

5. At the hearing in December R1 and R3 were represented by Mr A Khan, Solicitor. It is plain the acts complained of were allegedly done by R2 and R3 only. I needed to ascertain exactly who they were in relation to R1. Amon shops are operated by franchisees of which R1 is one. Mr Khan said R3 provided her services to R1 as an consultant. R2 was employed according to R3, by another franchisee in Doncaster and "lent" to R1 to help in setting up the shop in the Metrocentre. R3 believes R2 left the employment of that franchisee in June 2018. R2 had only ever been served with proceedings c/o R1's Gateshead address. A company search showed the sole director of R1 is a Mr Wang Yan. Today I took evidence from the claimant who said that as far as he was aware Mr Wang Yan was the husband of R3. He also said all wages paid to him went directly into his bank account and although originally his bank statements show the payments to have been made by R1, late in his employment they showed the payer as being R3.
6. I need not repeat in full the section headed "The Relevant Law" in my orders of 13 December 2018. I cited sections 40 ,26, 109, 110 and 111. I explained if R2 or R3 were R1's agents, rather than its employees, R1 is affixed with liability for whatever it is shown R2 or R3 said when acting with its authority. C believed R2 and R3 were employed by R1 . It is R1 and R3 who say otherwise. On 10 December the tribunal had received an email from R3's email address but signed by Meng Zhang stating R1 had never employed R2. If R2 or R3 are found to be an **employee or agent** of R1 they too would be liable. Under section 111 headed " Instructing, causing or inducing contraventions" if R2 and or R3 told C not to hire heterosexual or bisexual men or non white people they may be liable under that section too.
7. I will repeat in full the section headed "The Problems" in my orders of 13 December 2018:
16. This case as clarified by C depends first upon the evidence of Ms Tilney to attribute to R3 any potentially unlawful conduct. The claimant freely accepted R3 had never said anything directly to him in person or by telephone .

17. The other aspects of C's case rely upon what was said to him by R2 whether or not on instructions from R3. I must allow for the possibility that what R2 said was done on instruction from R3 in fact may not have been, but rather the views of R2 herself.

18. Before we tackle the issues of for whose conduct R1 could be liable and for what R2 or R3 may be liable under sections 110-111, it was the view of both parties and myself that it

was essential a further attempt be made to effect valid service on R2 . If it is not possible to do so, but the facts set out by C as to the role R2 and R3 played in the shop is accepted, it seems likely R2 in acting as a manager (she actually claimed, according to C to be the managing director) and R3 as a consultant were agents of R1. It, as well as C could be prejudiced in that without knowing what R2 has to say about the allegations against her, R1 will have difficulty in running any defence to the claim if what C alleges she said to him is accepted as true , which it may well be if she is not there to rebut his evidence.

8. By email from Mr Mohammed we were provided with a last known address for R2. A tribunal clerk wisely did a postcode check and found it contained spelling errors .I directed those spelling errors be corrected and the claim form sent to R2 which it was .It has not been returned on by the Royal Mail. More significantly the claimant said he received out of the blue a telephone call from R2 who said she would reply but he has not heard from her since. I am satisfied she has now had notice of the claim but has not entered a response.
9. At the time of conducting this hearing today I had not seen the following email because, due to the time it was sent, it had not been linked with the file

> **From:** Nazar Mohammad [mailto:nkhattak63@hotmail.com]
> **Sent:** 03 June 2019 17:15
> **To:** NEWCASTLEET <newcastleet@Justice.gov.uk>
> **Cc:** Legis Chambers <contact@legischambers.com>
> **Subject:** case no. 2501176/2018
> Dear Sir
> My clients R and R3
> I am instructed to write to the tribunal and express all due respect to the Tribunal, and ask they be excused from attending the hearing. The cost of travel and representation is prohibitive. I am instructed to reiterate the position in the reply the claim submitted at the outset. The Claimant was not an employee of either R1 or R3. I am instructed that neither R1 nor R3 harassed or caused or encouraged/incite any other to harass the Claimant. Th e is not particularised nor specific about exactly about the facts of the allegations and amount to an abuse of the Courts Process.
> R1 and R3 contend that the Claim has no merit, is malicious, misconceived and should be struck out.
> **Nazar Mohammad**
> Barrister at Law, MCIArb
> Legis Chambers

10. The statement “The Claimant was not an employee of either R1 or R3” contradicts what has been previously pleaded. All the documentary evidence I have seen clearly shows the claimant was at all material times employed by R1. It is also far more likely than not R3 was either an employee or more probably an agent of R1 . The same is likely to be true of R2. In such circumstances insofar as the claim is proved all three of them will be liable.