



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Whittaker

Respondents: (1) Overton House Ltd
(2) Safe Hands Care and Support Ltd

Heard at: Manchester

On: 16 October 2020

Before: Employment Judge Holmes

Representatives

For the claimant: In person

For the respondent: Mr Morton, Solicitor

JUDGMENT

It is the judgment of the Tribunal, that:

- 1) The hearing of the claimant's claims is postponed.
- 2) The parties, or either of them, are to notify the Tribunal in writing by close of business on Friday 13 November 2020 whether the parties have reached an agreement, or whether a hearing is required, whereupon the Tribunal will re-list the hearing, and issue further case management orders.

REASONS

1. The Tribunal convened to hear the claimant's claims of unlawful deduction from wages and allied claims. The Code V in the header indicates that this was a CVP hearing, held because the parties agreed that the issues could be determined without the need for an in person hearing. The claimant participated in person, and Mr Morton, solicitor appeared for the second respondent.
2. There was an initial delay to the commencement of the hearing, as the Employment Judge could not locate an electronic copy of the bundle, and no hard copy was available. When one was located, he noted that there were no witness statements enclosed within it.

3. He accordingly commenced the hearing, and enquired of the parties whether they had exchanged witness statements, and whether any had been sent to the Tribunal.
4. Mr Morton at this point accepted that the respondent had not prepared or served any witness statement, but he had not, he claimed had sight of (because he had not been able to open the copies sent to him) the claimant's witness statements, which had only been sent on 8 October 2020.
5. He then went on to take the Tribunal through the history of these claims and the orders that had been made. Employment Judge Warren held a hearing of the claims on 19 August 2019. The claimant had originally claimed solely against what was then the first respondent, Overton House Ltd. In the course of the hearing on 19 August 2019 the claimant had indicated that she had been employed by Safe Hands Care and Support Ltd, now the second respondent. Whilst a further hearing was to have been held on 1 November 2019, the Tribunal did not send out any judgement or orders following that hearing, possibly because of the flooding that affected its offices in October 2019. The hearing of 1 November 2019 was accordingly postponed, and relisted on 10 January 2020.
6. Case Management orders were made, dated 13 January 2020, and sent to the parties on 17 January 2020. Mr Morton believed that no hearing actually took place on 10 January 2020 and this appears to be correct.
7. Whilst those orders did provide for disclosure, preparation of the hearing bundle and exchange of witness statements, there had been difficulties. Mr Morton made reference to earlier communications in autumn 2019, and in particular the claimant's schedule of loss document (page 97 of the bundle produced for this hearing), which he contended was unclear. He made reference to the need for the respondent to understand how the claimant was splitting her claims between the two respondents, and how whilst she had provided documents in the past, the respondent was still unclear as to the basis of the claims against it.
8. The hearing listed for 1 June 2020 was postponed due to the national pandemic, by letter of 21 May 2020. The parties had not in the meantime complied with the Tribunal's orders.
9. Thereafter there had been some further confusion, Mr Morton submitted, in relation to the claimant's attempts to serve her witness statements and other documents which could not be opened in the format in which they had been submitted.
10. He also referred to the Tribunal to the confusing communications sent by it, in that whilst the hearing had been relisted for 16 October 2020 with a time estimate of one day, to be heard by CVP, the Tribunal subsequently notified the parties that the time estimate was now one hour, which led to the belief that this was in fact now a preliminary hearing, and not the final hearing.
11. The Employment Judge explored the extent to which, and reasons why, the

clear case management orders sent to the parties on 17 January 2020 had not been complied with. Whilst appreciating the postponements that had occurred, he noted that in each case notwithstanding that the case management orders required exchange of witness statements no later than 14 days before the final hearing, no such exchange had apparently taken place, and the respective postponements had happened less than 14 days before the relevant hearing was listed. The respondent had not to date, Mr Morton conceded, prepared a witness statement, although its proposed witness Mr Ashraf was present at the CVP hearing. Mr Morton suggested that this was because the claimant had not sufficiently clarified her claims, or provided all the documents to the respondent.

12. Mr Morton submitted, in essence, that the claims could not be heard by the Tribunal in this state, and that a postponement would be required. He indicated that if the claimant was able to clarify the claims, and provide further details, it may be that the second respondent would be able to settle her claims at least insofar as they related to work that she allegedly carried out for the second respondent.
13. The Employment Judge sought the claimant's views on this application. She accepted that she had only recently sought to serve upon the respondent and had copied to the Tribunal her witness statements, but they had been prepared. She claimed that she had previously sent the statements to the respondent in 2019, but she had sent them to the first respondent by post, and accepted that this may not have been an effective way of serving her witness evidence.
14. Employment Judge took the opportunity to take the claimant through her schedule of loss. She confirmed that she had indeed been employed to work in two different businesses, one being the care home, Overton House, and the other being a domiciliary care business, operated by Safe Hands Care and Support. The two did, however, overlap somewhat, in that the claimant would carry out the domiciliary care work in an office at the care home. She referred to being employed by Mr Ashraf, who, the Tribunal had established was a Director of both the respondent companies at the material time.
15. The Employment Judge explored with the claimant the nature of corporate liability, and how an individual may trade through one or more limited companies, but would not thereby be personally liable as the employer of the claimant. The claimant, not being legally qualified and being unrepresented, was unsurprisingly unaware of this legal distinction.
16. From documents in the bundle before the Tribunal, it was clear that the claimant was paid by the second respondent. Those payslips, however, did not cover the totality of her period of employment, and she confirmed that she was also paid by Overton House Ltd. It thus may be the case but she had two employers, in terms of two limited companies.
17. The second respondent's case will apparently be that although it paid the claimant on at least three occasions, it was doing so not because it was her employer, but was doing so on behalf of Overton House Ltd, to alleviate cash flow difficulties from which it was suffering.

18. The employment Judge took the claimant through her schedule of loss in her email of 8 November 2019. He clarified the sums that she was claiming in respect of each company, and how she had calculated these sums.
19. Mr Morton had indicated that the second respondent may be amenable to settling the claimant's claims against it, but would not consider meeting any claims which properly fell against Overton House Ltd.
20. The Employment Judge explained this to the claimant, and asked if she had any objection to the proposal that Mr Morton was making that the hearing be postponed for the parties to have further discussions, and for the appropriate documents witness statements and other information to be exchanged.
21. The claimant indicated that she may well consider such a proposal, thereby forgoing any claims in respect of payments due from Overton House Ltd.
22. The Employment Judge did point out that Overton House Ltd, having gone into liquidation, had now, on 1 August 2020, been dissolved, and hence the claimant could not proceed against that company, without having it restored to the register of companies. She would need therefore to establish not only that the second respondent owed her payments in respect of the work that she did for that company, but also that it was also liable to pay any unpaid monies due to her from Overton House Ltd.,
23. The claimant was agreeable to Mr Morton's proposal, and, as the Employment Judge was reluctantly forced to agree that the claims were not in a fit state to be determined by the Tribunal at this stage, he granted the postponement.
24. The parties over the ensuing four weeks are to seek to resolve these claims, if necessary with the further assistance of ACAS. They are then to notify the Tribunal if this is not been possible, whereupon the claims will be relisted, and further case management orders made. In the meantime, given the difficulties that email communication and transmission of documentation has apparently caused, he recommended that the parties resort to posting hard copies to each other and the Tribunal in future.
25. If the claims are to be heard, there is clearly more of documentation required, not least of all the missing payslips, and evidence from the internal accounting systems of both respondent companies (Mr Ashraf being a director of both) to demonstrate which of the respondents employed the claimant at any given time, and indeed whether, in fact, both of them did. Mr Ashraf will clearly have to make a witness statement explaining these matters.
26. The claimant for her part will need to be able to demonstrate what work she did for which company, what she was paid, and when. It is unclear, for example, whether she actually received the sums set out in the three disclosed payslips from the second respondent, or whether any of these sums form part of the claims that she is making. All that, and doubtless more, can be considered further if the claims are to proceed.

27. For the present, the Tribunal could do no more than to grant the postponement requested, and to await further notification from the parties as to the future conduct of these claims.

Employment Judge **Holmes**

Dated : 16 October 2020

JUDGMENT SENT TO THE PARTIES ON

3 November 2020

FOR THE TRIBUNAL OFFICE