



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4100316/18**

**Held on 19 October 2020**

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**Employment Judge N M Hosie**

**Mr K Hunter**

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**Claimant  
Represented by  
Ms L Beedie,  
Solicitor**

**JBS Fabrication Ltd**

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**1<sup>st</sup> Respondent  
Represented by  
Mr B Prajapati,  
Solicitor**

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**Mr Michael McCafferty  
c/o JBS Fabrication Limited**

**2<sup>nd</sup> Respondent  
Represented by  
Mr B Prajapati,  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that Mr Scott Buchan is sisted as a third respondent.

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### **REASONS**

1. The respondent's solicitor applied to sist Mr Scott Buchan as a third  
40 respondent. The application was opposed by the claimant's solicitor.

**E.T. Z4 (WR)**

2. I conducted a preliminary hearing to consider case management on 31 July 2020. In the Note which I issued following that preliminary hearing I directed the parties to make final written submissions in respect of the issue.

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3. On 6 August, therefore, the respondent's solicitor made written submissions by way of an attachment to his e-mail. The claimant's solicitor responded by e-mail on 3 September 2020 and the respondent's solicitor made further submissions by e-mail on 10 September 2020.

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4. I do not propose rehearsing these as I readily satisfied that the submissions by the respondent's solicitor are well-founded and that I should exercise my discretion under Rule 34 of the Tribunal Rules of Procedure to add Mr Buchan as a respondent.

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### Discussion and Decision

5. Rule 34 in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is in the following terms:-

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***“Addition, Substitution and Removal of Parties***

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***34.*** *The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.”*

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6. Mr Buchan was a co-director of the second respondent at the time of the relevant TUPE transfer, he signed documentation and was involved in decision making. As I understand it, this TUPE transfer which forms the basis for the claim as the claimant complains that the conduct of the directors was not *bona fide*.

7. The claimant's solicitor submitted that unlike the second respondent, Mr McCafferty she does not wish to challenge Mr Buchan's conduct.
- 5 8. Nevertheless, having regard to Rule 34, addition of parties can be exercised by the Tribunal where it appears there are "*issues between*" the person to be joined that any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined.
- 10 9. The principles governing the Tribunal's discretion to add a party are the same as to any other sort of amendments. In arriving at my view, therefore, I had regard to the guidance in ***Selkent Bus Company Ltd v. Moor*** [1996] ICR 836. In my view, the balance of hardship and injustice favours the respondent's application.
- 15 10. Accordingly, Mr Scott Buchan is sisted as a third respondent. **I direct the respondent's solicitor, therefore, to advise the Tribunal within the next 7 days of Mr Buchan's address so that the appropriate intimation of the claim can be made to him.**

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<b>Employment judge</b>	<b>Nick Hosie</b>
<b>Date of Judgement</b>	<b>30 October 2020</b>
<b>Date sent to parties</b>	<b>2 November 2020</b>