



EMPLOYMENT TRIBUNALS

Claimant

In House Carpentry Limited

v

Respondent

Construction Industry Training Board

Heard at: Norwich (by CVP)

On: 6 November 2020

Before: Employment Judge M Bloom

Members: Ms L Durrant and Mr G Page.

Appearances

For the Claimant: Mr R Wrigglesworth (Director).

For the Respondent: Mr J Byrne.

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT

1. The unanimous decision of the Employment Tribunal is that the Appellant's appeal against the levy imposed by the Respondent fails and is therefore dismissed.

REASONS

1. This is an appeal by the Appellant, In House Carpentry Limited, against a 2018 levy assessment notice served on them dated 6 April 2019 in the sum of £461.00 which notice is based on a 2018 assessment. The Appellant made representation through its director Mr R Wrigglesworth. We also heard representations from Mr Byrne who represented the Respondent. The Tribunal had the benefit of a Bundle of Documents consisting of 133 pages which contained relevant correspondence between the parties as well as case law relevant to the position and the relevant statutory provisions.

2. The relevant legal provisions are contained within the Industrial Training Act 1982, section 11, which gives legal effect to proposals to raise a levy on certain specified industries for the purposes of industrial training. Pursuant to section 12 of the 1982 Act a company that considers it is not liable to pay the levy may appeal pursuant to the provisions under section 12(5) to an Employment Tribunal. The burden of proof is on the Appellant to satisfy the Employment Tribunal that it ought not to have been assessed to the levy or ought to have been assessed in a smaller amount. Mr Wrigglesworth on behalf of the Appellant confirmed that the amount was not in question and that is not a ground of appeal.
3. The Industrial Training Act 1982 is given effect by two relevant Orders. The first is the Order which defines whether a person (including company) is within the jurisdiction of a levy board in this case the construction industry training board i.e. the Respondent. The appropriate Order is the Industrial Training (Construction Board) Order 1964 (amendment) Order 1992. Schedule 1 to that Order defines what are the activities the construction industry would bring to any individual organisation and therefore falling within the scope of the construction industry training board. There is no dispute and Mr Wrigglesworth confirmed that the Appellant company is one that is engaged in the activity of 'construction, alteration, repair or demolition of a building or part of building' – 1(a)(i) Schedule 1 of the 1992 Order. There is also no dispute in this appeal that the Appellant company falls within the definition of an enterprise engaged in the 'construction industry' pursuant to the provisions of the Industrial Training Levy (Construction Board) Order 2002.
4. The Appellant company was incorporated on 20 March 2012 some 7 years prior to the assessment notice which is subject to this appeal. From the papers prior to the limited company being incorporated it was clear that Mr Wrigglesworth was trading outside the incorporated company. The registration number given to Mr Wrigglesworth as a sole trader was subsequently used as the same registration number for the limited company.
5. The ground of appeal but forward by Mr Wrigglesworth before us differed from the one pleaded and the one which was identified in Case Management Order following the Preliminary Hearing on 28 October 2019. The way that the Appeal was identified at the Preliminary Hearing on behalf of the Appellant was that the limited company had not signed up to the relevant scheme and therefore was not liable. The Appeal ground put to us by Mr Wrigglesworth was that the Appellant was not liable to pay the levy because they i.e. the limited company had never been formally registered with the Board.
6. Having heard the parties and having read the relevant statutory provisions we are unanimously satisfied that it is not necessary for a company that falls within the definition of one under the relevant Orders be individually registered to be liable for paying the levy. Provided that the assessment has been correctly calculated and has been validly served the liability to pay

the relevant levy follows without the necessity for that business to be individually registered. The situation is similar to that of the position that arose in another Employment Tribunal (then an Industrial Tribunal) in case of Mr C Genchi v Construction Industry Training Board in January 1991 when the Tribunal, inter alia, stated ‘the levy is a tax and like all taxes it has to be paid if the relevant conditions apply whether or not the person paying the tax gets the benefit’. In our Judgment a similar position arises in this case namely the levy is due whether or not the company was individually registered or not. The assessment notice served on the Appellant was validly served and in our Judgment the Appellant is liable to pay the levy.

7. For the above reason the Appeal fails and is, as a result, dismissed.

Employment Judge M Bloom

Date: 20 November 2020

Sent to the parties on: 03/12/2020

Jon Marlowe
For the Tribunal Office