



EMPLOYMENT TRIBUNALS

Claimant: Ms Marie Green

Respondent: Restore Cleaning Ltd (dissolved)

Heard at: Newcastle (by telephone/CVP)

On: 5 October 2020

Before: Employment Judge Langridge

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT

The claimant's application to join Mrs Rachel Seddon as respondent to these claims is refused on the grounds that the legal entity which engaged the claimant to work for it was the respondent, a company which was dissolved on 24 December 2019.

REASONS

1. This remedy hearing was listed to take place by CVP video link, following a late postponement in March as a result of the impact of the coronavirus pandemic. Due to a faulty audio feed, and with the claimant's agreement, the hearing was ultimately conducted by telephone in the absence of any attendance or contact from the respondent. Both the claimant and Mrs Seddon, the former director of the respondent, were made aware of today's hearing. Mrs Seddon washad been given the opportunity to respond to the claimant's application to add her (or her new limited company) as a respondent to the claim for the purpose of obtaining a remedy judgment. This arose because after the liability hearing Mrs Seddon took steps to close the respondent, Restore Cleaning Ltd (company number 10358928). She wrote to the Tribunal in early September 2019 to say the company ceased trading on 13 August 2019 and that an application had already been made to strike it off the register at Companies House.

2. Mrs Seddon incorporated a new company called Restore Home Cleaning Limited (company number 12156802) on 14 August 2019, based at the same office as the claimant used to attend when she worked for the respondent. The respondent was formally dissolved on 24 December 2019 and the limited company no longer exists as a legal entity. It is not therefore possible to award a remedy judgment against the respondent. The claimant wrote to the Tribunal asking if she could substitute Mrs Seddon personally as the respondent, and that was the main purpose of today's hearing. The claimant filed a brief witness statement saying she believed she was employed by Mrs Seddon personally on the grounds that she was the person with whom she dealt and had contact on a day-to-day basis. The claimant's engagement with the respondent was not documented in writing, and the respondent's paperwork (as produced in the bundle at the liability hearing) did not indicate one way or the other who the employer was. The documents do not record in clear terms the terms and conditions under which the claimant worked for the respondent, and the paperwork is neutral on the question whether she worked for the limited company or for Mrs Seddon personally. Some of the documents refer to "Restore Cleaning" but without the word "Limited". It is clear that at no time did the claimant work for the new limited company, which was not incorporated until after the claimant's position came to an end on 26 June 2018.

3. It is possible that the name "Restore Cleaning" was the trading name of the respondent company, or of Mrs Seddon personally, but the Tribunal has no evidence available to it suggesting that it was the latter. There is no doubt that Mrs Seddon was the sole director of the respondent and as such its activities would be carried out by her personally but on behalf of the limited company. In those circumstances it would be unsurprising for Mrs Seddon and her limited company to appear indistinguishable from each other in day-to-day communications. A limited company can only operate and communicate through the individual that manages it.

4. In the absence of any evidence that the claimant was employed by Mrs Seddon personally, the Tribunal is satisfied that the party which was liable for the liability judgment was the respondent, a company which unfortunately for the claimant no longer exists. It is not therefore possible to award a judgment against the respondent. The suggestion that it might have been Mrs Seddon who employed the claimant is not supported by any evidence and is in fact contradicted by the fact that Mrs Seddon undoubtedly did operate through a limited company at the time the claimant worked there.

5. Had it been possible to award a judgment today, and in the absence of Mrs Seddon or any other person representing the interests of her businesses, the Tribunal would have made an award in accordance with the declarations in its liability judgment, as set out below.

Holiday pay

6. The claimant was entitled to annual leave totalling 5.6 weeks under the Working Time Regulations 1998, to be calculated pro rata for each year or part year worked.

7. The claimant started working for the respondent on 21 April 2017 and for the period from then to 31 December 2017 she should have received holiday pay based

on a 20 hour week at the hourly rate of £8. For the period between 1 January 2018 and 26 June 2018 the claimant should have received holiday pay based on a 20 hour week at the hourly rate of £8.

National Minimum Wage

8. In addition, the Tribunal would have made an award based on the respondent's breach of the National Minimum Wage Act in respect of the unpaid hours worked by the claimant when she was travelling on the respondent's business during working hours. These calculations would have been based on the table prepared by the claimant for the hearing on 9 April 2019 setting out dates, details of the travel undertaken and the amount of time taken. Those calculations have not been challenged and the Tribunal accepts them. Had it been in a position to make an award against the respondent today, the Tribunal would have awarded a total of £531 comprising £370 representing the shortfall between wages actually paid and the applicable National Minimum Wage in the period between 27 April 2017 and 29 March 2018, namely £7.50. Furthermore, the Tribunal would have awarded £161 in respect of such a shortfall in the period from 3 April 2018 to 22 June 2018, based on a National Minimum Wage of £7.83. In the circumstances of this case it has not been possible to make formal awards in these sums.

9. The claimant's application to add Mrs Seddon as a respondent to the claim in order to enforce her remedies is refused on the grounds that there is insufficient evidence that Mrs Seddon was conducting her business as a sole trader, but rather the evidence available indicates that she was operating through the respondent as a limited company. For these reasons the Tribunal does not agree that Mrs Seddon should be made personally liable for the claimant's remedy.

Employment Judge Langridge

Date 19 October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
8 December 2020

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