Case No. 2408651/2020 & Others
2408694/2020 & Others
2408648/2020 & others
2408744/2020 & Others
2408656/2020 & Others
Code V

EMPLOYMENT TRIBUNALS

Claimants: Mrs R Burrell & Others
Ms Cooke & Others
Miss E Bamber & Others
Mrs Goldfinch & Others
Mrs Broome & Others

Respondents:
1. P & A Food Management Services Limited (in Administration)
2. Dolce UK Limited
3. Blackpool Council
4. Lancashire County Council

Heard at: Manchester (by CVP) **On:** 28 April 2021

Before: Employment Judge Leach

REPRESENTATION:

Claimants: Mr Shellum, Counsel
1st Respondent: Did not attend
2nd Respondent: Miss M Tether
3rd Respondent: Did not attend
4th Respondent: Did not attend

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the second respondent's application, that the claimant's claims against the second respondent should be rejected under rule 12 of the Employment Tribunal Rules of Procedure 2013, is refused.

REASONS

1. The claimants in these claims were at all relevant times employed in catering roles in various schools in Lancashire.

2. The employments of the claimants were affected by one or more changes in the identity of contractors undertaking catering contracts under which they were employed. These changes may have been relevant transfers for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") ("Relevant Transfer").

3. At the start of the period which is relevant to these claims I understand the claimants' employer was the first respondent, which became insolvent and is now the subject of administration proceedings.

4. The second respondent has provided detailed grounds of response to these claims. For the purposes of this Preliminary Hearing only (at which stage no findings of fact are made) I note the following, relying principally on the second respondent's Notice of Appearance and attached Grounds of Response (GOR):-

(1) On the insolvency of the first respondent, other arrangements had to be made to provide catering services at the affected schools (Catering Services).

(2) On or about 3 March 2020, the administrators of the first respondent sold the business and certain assets of the first respondent to the second respondent.

(3) The sale noted in b. above did not include a right to continue to provide the Catering Services (whether by way of a novation or assignment of contract or otherwise).

(4) Separately, either the second respondent or Dolce Limited entered in to agreements with the schools/local authorities to provide the Catering Services. In its response, the second respondent is clear that it was Dolce Limited (rather than the second respondent) who agreed to (and did) provide Catering Services.

(5) The second respondent denies that there was a relevant transfer from first respondent to second respondent, noting that (1) the first respondent had no right to sell the benefit of these contracts and that (2) the second respondent did not provide catering services at the affected schools, as they were provided by Dolce limited.

5. It appears therefore that the "business and certain assets" of the first respondent transferred to the second respondent (para 13 of the GOR) but it was Dolce Limited that started to carry out the activities comprising the Catering Services (paras 18 and 19 if the second respondent's GOR). One or both of these steps may have amounted to a Relevant Transfer although the second respondent denies that either did (paras 20 and 21 of the GOR).

The Second Respondent's application

6. ACAS early conciliation certificates obtained by the claimants include ones which name Dolce Limited as a prospective respondent but not any which name Dolce UK Limited (the second respondent). The address provided on the relevant EC certificates is "Dolce Limited Lowton Business Park, Newton Road, Lowton St Mary's, Warrington, Lancashire WA3 2AN."

7. The application for the Tribunal to reject all claims against the second respondent is made in reliance on rule 12(1)(e) and 12(2) of the Rules of Procedure.

8. The relevant rules are as follows:

> *"12. Rejection: Substantive Defects*
>
> *(1) The staff of the Tribunal shall refer a claim form to an Employment Judge if they consider that the claim or part of it, may be –*
>
> *(e) One which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates.*
>
> *2A The claim or part of it shall be rejected if the Judge considers that the claim or part of it is of a kind described in subparagraph (e) … of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim."*

9. The claim forms name Dolce UK Limited. The early conciliation certificates name Dolce Limited.

10. At the beginning of the hearing Miss Tether, rightly, asked whether the issue had been already considered by an Employment Judge on initial vetting of the claims received at the Tribunal office. It was clear to me on reviewing the various case files in this multiple that the point had not been considered on vetting. No judicial determination therefore had been made. In the course of the hearing I did question whether the correct course of action for the second respondent might have been to appeal the acceptance of the claims. As there was no judicial determination at vetting stage, I agree with Miss Tether that it was appropriate for the second respondent to make the application in the way that they did. I also note that they first raised the issue in its response form and correspondence accompanying the response form. The application was therefore made by the second respondent at the first available opportunity.

11. In October 2020, Rule 12(2A) was amended. The term "minor error" has been replaced with "error." Now a Judge may accept a claim where it contains an error,

not just a minor error. However, these claims were presented before October 2020 and both counsel agree that the application should be considered on the basis of the wording of 12(2A) before October 2020. That is what I have done.

Relevant Case Law.

12. I was referred to the following authorities which I have considered:-

(1) Giny v. SNA Transport Limited (UKEAT/0317/16) ("Giny")

(2) Chard v. Tropwbridge Office Cleaning Services Limited (UKEAT/0254/16) ("Chard")

13. I also considered the judgment in Savage v. JC 1991 LLP (EATS 0002/17 S).

14.

The second respondent's submissions in support of their application

15. Arguments in support of the application were made by solicitors for the second respondent (Rollits LLP) in their letter dated 28 October 2020. Miss Tether also provided a skeleton argument which expanded on these. These were considered further in the course of Miss Tether's oral submissions. I briefly summarise the basis of the application as follows:

(1) Dolce UK Limited (the second respondent) has not provided catering services at any of the schools at which the claimants were employed, the reason given being that none of the schools were willing to contract with a company that they did not know.

(2) However, the schools were content to contract with Dolce Limited and this company (rather than the second respondent) started to provide catering services at various relevant schools from 3 March 2020.

(3) As the name of the second respondent on the claim forms differed from the name of the second respondent on the EC certificate, the Tribunal staff were duty bound to refer to the claim to an Employment Judge, having regard to the requirements of rule 12.

(4) The difference in the names (Dolce Limited and Dolce UK Limited) is not a minor error as there are two separate entities, and the claimants/the claimants' advisers were well aware that these two separate entities existed. Miss Tether referred me to a letter from the administrators of the first respondents which noted that Dolce UK Limited had bought "*the Company business and certain assets"* of the first respondent (page 319).

(5) Miss Tether also referred me to correspondence at pages 304 and 321 which, she says, make clear that the claimants' employment was

transferring to Dolce UK Limited rather than Dolce Limited (although now denying that there was a Relevant Transfer)

(6) Engaging in early conciliation with one entity and then bringing proceedings against a completely separate entity cannot be a minor error.

(7) Referring to the authorities, that I should prefer the stricter approach set out in the EAT's judgment in Giny and apply the 2 stage test set out at paragraph 35 of this Judgment. As such I should first consider whether or not an error is "minor" (without placing any gloss on the simple and straightforward language of the Rules). Only if I conclude that it is minor error, should I apply the second stage and decide whether it would be in the interests of justice to reject the claim. The circumstances of the cases before me are such that I should not get beyond the first stage.

Claimants' Submissions

16. I summarise Mr Shellum's submissions:

(1) The claimants accept that the test to be applied is whether it is a minor error and not in accordance with the Rules as amended in October 2020.

(2) The second respondent/those operating the second respondent and Dolce Limited were casual about the name of the company from time to time, (Mr Shellum noting that the names of the 2 copanies were referred to *"interchangeably and ambiguously").* A number of examples were provided which I note below.

(3) That it is common ground that the name of the respondent on the claim forms (Dolce UK Limited) is not the same as the name of the prospective respondents on the EC Certificates (Dolce Limited) and also common ground that there is no error in the address (the registered offices of both companies being the same). Further, both companies share the same directors and both represented by the same solicitors and counsel.

(4) It was only upon receipt of the Grounds of Resistance from the second respondent that the claimants learned for the first time what Dolce's position is (Dolce being used here a term to refer to both companies).

(5) That this is plainly a minor error.

(6) As far as the authorities are concerned that I should prefer the later decision in Chard over Giny, noting particularly the emphasis on the application of the Overriding Objective and the need to consider the interests of justice when deciding whether an error is a minor error, not following then.

Examples.

17. Page 306 is a letter which states that the claimants have transferred to *Dolce UK Limited,* then provides for information and references an address for *"Dolce Limited,*" then giving the registered address for both companies.

18. At Page 308 is a document which states a requirement of the claimant employees transferring to return completed documents and information "*before you commence employment with Dolce Limited."*

19. Within the narrative of documents at pages 309, 310 and 312 at various points it is stated that the employer is *"Dolce Limited".*

20. Yet at page 321 it is stated *"we are delighted to welcome you to the staff at Dolce UK Limited."*

21. I also note that the document at 321 has, as its "letterhead" a logo which simply states "Dolce;" then referring to "Dolce UK Limited, as noted immediately above but which then at its footer, states the registered company number of Dolce Limited.

Conclusion

22. It is not unusual for Employment Tribunals to be presented with claim forms where a claimant has "missed out" a word within a full company title on an ACAS Certificate such as "Limited" or for example referring to "X Limited" rather than "X Retail Limited" (or, as in this case, "UK") even where the full registered name of a company has been used on the claim form itself. Generally, such an omission would be regarded as a minor error. The fact that 2 known separate entities have been referred to here (which potentially makes the error more significant than "minor") has to be considered in the context of the facts/circumstances applicable and especially those noted under the heading "Examples."

23. I agree with Mr Shellum that the 2 company names, Dolce Limited and Dolce UK Limited, have been used interchangeably and ambiguously.

24. The omission or addition of a term such as "UK" is a company title which would generally be regarded as a minor error, does not become a more significant error in these circumstances where the second respondent and its associated company, Dolce Limited, are lax in their use of company names to the extent that it is not at all clear (as it should be) from the employment documents provided, which of these 2 companies became the claimant's employer. The fact that the EC Certificate refers to one legal entity and the claim form to another has to be considered in this context.

25. I am also required to ensure the application of the Overriding Objective (as made clear by the EAT's judgment in Chard and as clear from the wording of Rule 2 itself) when considering and reaching my decision on this issue. Miss Tether's

submissions are that I should prefer the approach in Giny and only consider the interests of justice in the event that the claimants get over the "hurdle" of showing the error is minor. Whilst I do not agree, adopting that approach (1) the error is clearly a minor error, applying the simple and straightforward language of Rule 12(2A) (as was); (2) it would not be in the interests of justice to reject the claim. Rejecting the claims would deny the claimants their right to present these claims in circumstances where a minor error had occurred, in the confusion (not of their making) surrounding the identity of the employing entity.

26. Accordingly, the application of the second respondent is refused.

Employment Judge Leach

Date 27 May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

2 June 2021

FOR THE TRIBUNAL OFFICE