



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr S Deanie

AND

Respondent
(1) PRIORITY DESIGN SERVICES LTD
(2) ASTON MARTIN LAGONDA LTD

REASONS

1 On 6 July 2021 I made the following judgment:

Having read the written representations from the parties, and taking into consideration the issues to be determined in this case, the claims against the first respondent are hereby dismissed. The claims against Aston Martin Lagonda Ltd remain listed for hearing on 16 to 29 November 2021.

2 The claimant emailed the following day to ask for a further explanation for my decision, which I have taken to be a request for written reasons.

3 I held a case management hearing on 20 October 2020 and, in my Order, summarised the background and issues as follows.

Background and Issues

4 The claimant presented a Claim Form on 3 February 2020 alleging that he was discriminated against because of disability. The nature of the condition said to amount to disability was unclear, as were the allegations. The claim was out of time because the last act complained of was 8 July 2019. The claimant had complied with the Early Conciliation requirements as regards the first respondent, albeit under the name of Millbank Holdings Ltd.

2 A Response was submitted by the first respondent contending it was not the claimant's employer and that he was an agency worker for ICS Umbrella Services Ltd. The first respondent also contended that the claimant was an agency

worker placed with the second respondent. The first respondent denied responsibility for the claims and argued that it was unaware of the claimant's alleged disability or any issues arising because of it.

3 In a case management hearing before Employment Judge Butler on 14 April 2020 he (amongst other things) added the second respondent, corrected the first respondent's title to that set out herein, declined to add ICS Umbrella Services Ltd because it appeared to be a payroll service and not an agency, and listed a further case management hearing for 20 July 2020.

4 The second respondent submitted a Response on 3 July 2020, and applied for further time to prepare a full Response. On 14 July 2020 the second respondent requested further and better particulars (i.e. further details) of the claims and allegations.

5 A case management hearing by telephone took place on 20 July 2020. Employment Judge Richardson decided (amongst other things) not to substitute ICS Umbrella Services Ltd in place of the first respondent, and seemingly gave oral reasons for that decision in which she said that ICS was a payroll provider and not the agency supplying the claimant to the second respondent. She listed an Open Preliminary Hearing to decide if the claimant was disabled at the material time and to consider whether the claim could proceed out of time. She ordered the claimant to provide the further details requested by the second respondent and made orders in respect of the Open Preliminary Hearing.

6 By the time of the Open Preliminary hearing both respondents had conceded that the claimant was disabled as from 24 March 2019 with spinal arthritis. The claimant has made reference to other conditions, but the arthritis is the condition relied on for the purposes of this claim.

7 On 2 and 14 September 2020 (the latter day being in chambers) Employment Judge Miller dealt with the preliminary time limitation issue. He gave oral reasons for concluding that the last act complained of by the claimant (8 July 2019) could proceed out of time, and said that it would be for the Employment Tribunal dealing with the substantive hearing to decide whether any other claims were part of a continuing course of conduct ending with the allegation on 8 July 2020, or could proceed out of time on a just and equitable basis. He made further directions including an Order that the claimant should provide further and better particulars of claim as requested by the second respondent on 14 July 2020. He arranged a further telephone Preliminary Hearing for case management, to set down the case for trial and make directions.

The case management hearing before me

8 The first respondent sought to reopen the question of whether it was a correct respondent to these proceedings. I took the view that this was an attempt to reopen an issue which had already been judicially considered twice in the

context of adding or substituting ICT. Consequently I was not prepared to order yet another Preliminary Hearing at that point. However, I did record that it was, of course, open to the first respondent to continue to argue it has no legal responsibility for these claims.

9 I recorded that the claimant confirmed that the only complaint against the first respondent is that it failed to make a reasonable adjustment by not reassessing the suitability of his placement with the second respondent (paragraph 19(ix) of list of issues). The claimant told me that he considered the first respondent had been unsympathetic to his situation, but I explained that did not constitute a disability discrimination allegation.

Written submissions

10 It appears that the present list of issues also alleges that the first respondent failed to make a reasonable adjustment by requiring the claimant to work overtime. There are therefore only two allegations which the claimant makes against the first respondent.

11 The first respondent's case is now that case preparation has been undertaken it has become apparent that there is no viable claim against it. The first respondent contends that it had no obligation to reassess the claimant's placement; and that it had no control over the second respondent's overtime practices. The first respondent also pointed out having to participate in a ten day hearing which (with the exception of the two allegations identified) concerns allegations against the second respondent, in respect of which the claimant has four witnesses and the second respondent has six, and upon which it cannot comment, would be extremely prejudicial and cause it to incur unnecessary (and very high) costs.

12 The second respondent confirmed on 6 May 2021 that it did not object to the proceedings against the first respondent being dismissed.

13 The claimant wrote on 31 May 2021, stating that Employment Judge Richardson had determined that the first respondent was the correct respondent. He described confusion as to the identity of the first respondent as being due to there being a group of companies with Priory Design Ltd being included in his paperwork; Millbank Holdings Ltd having overall responsibility; and ICS Ltd also being a subsidiary company. He said that because he was an agency worker his position as between the first and second respondent was compromised, and that whilst most of his claim concerns the second respondent, the first respondent had failed to prevent discrimination by the second respondent and had failed to engage with him about the assignment once it had commenced.

14 Having considered the above written submissions, I decided that the first respondent is not a correct respondent to these proceedings. If the overtime

reasonable adjustment complaint succeeds, the second respondent is clearly responsible for overtime arrangements and any redress lies against it. As to the reasonable adjustments complaint about reassessing the suitability of the placement, I am doubtful as to whether the first respondent has a legal obligation to do so unless, perhaps, it was specifically asked to by the claimant because of his disability. Further, by analogy to obtaining an OH report for the purpose of determining if reasonable adjustments are required, assessing a placement would not, of itself, amount to a reasonable adjustment as a matter of law. Finally, the fact that the second respondent accepts that it is the correct respondent, and does not seek to argue that the first respondent has any legal responsibility for these claims if they succeed, confirms that the first respondent should not be a respondent, and that the claimant will not be prejudiced by the dismissal of his claims against it.

15 It is not in the interests of justice, or in line with the overriding objective, to require an entity who has no legal responsibility to remain a party to proceedings merely because the claimant asserts that his position would be compromised by its removal. I am mindful that the claimant is not legally trained and is representing himself, and is understandably fearful of removing the first respondent in case that respondent does prove to be legally responsible rather than the second respondent. However, it is quite clear that removing the first respondent does in fact not jeopardise the claimant in any way, and that it would be unjust not to do so.

Employment Judge Hughes
22 July 2021