



# **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111441/2019  
Held in Glasgow on 21 January 2020  
Employment Judge R Gall**

**Mr AS Ramsay**

**Claimant  
Represented by:  
Mr A Ramsay -  
Father**

**Inex Homes Hardware**

**Respondent  
Appearance, no ET3**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that amendment is permitted so that the respondents now are "M Farooq trading as Home Hardware Store". The address of the respondents remains 1 7 7 - 1 7 9 High Street, Irvine, North Ayrshire KA12 8AD. The claim is to be served on this respondent, giving him the opportunity to defend the claim, if so advised.

## **REASONS**

1. This claim was raised against Inex Home Hardware. No form ET3 was submitted. The claim was therefore undefended.
2. Prior to potential issue of Judgment under Rule 21, clarification was sought of some details in order to try to ensure that the respondent had correctly been identified. A note had been received from someone, who had not signed it and had not identified himself or herself, stating that he or she had taken on the business from June 2019.
3. The replies received from the claimant were not totally clear and accordingly a Preliminary Hearing ("PH") was set down for 21 January in order to determine the identity of the employer.
4. At this hearing the claimant appeared. His father appeared and spoke on his

behalf. The claimant was unable to speak easily or without pain as he has recently had a laryngectomy. Mr Farooq attended although no form ET3 had been submitted. He was accompanied by two people to support him.

5. I explained to Mr Farooq that as no form ET3 had been submitted, he was only able to participate in the proceedings to the extent permitted by me as Employment Judge. This is in terms of Rule 21 . Given however that the PH was set down to determine the identity of employer, I interacted with Mr Farooq with a view to obtaining clarification from him of some points, in particular whether he accepted liability and also to try to establish the entity under which he traded.

6. No evidence was taken from anyone during this PH.

7. The claimant remains employed by the business. The business is now run by Mr Farooq. Mr Farooq confirmed to me that he was a sole trader, trading as Home Hardware Store. He said that he had taken over the business in June 2019. He said he had tried to hold a discussion with the claimant regarding issuing a contract of employment. The claimant had however been absent through illness. Mr Farooq said that if liable, he was only liable from time of taking over the business.

8. I explained to Mr Farooq that it might be the case that there had been a transfer under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). That might be a matter upon which he required to take advice. TUPE can operate to transfer the employment of employees with all their potential rights even in circumstances where an incoming employer or business owner does not realise that to be the case. Evidence and possible legal submissions might be required to determine these points.

9. There was a degree of dispute as to exactly when Mr Farooq had taken on the business. That did not seem to me to matter in relation to the point which I required, if possible, to determine namely identity of employer.

10. Mr Ramsay confirmed that Mr Farooq was indeed his current employer. He maintains that, as I understood him, Mr Farooq has inherited liability for this claim which is for, broadly put, shortfall in wages going back some years.

11. It was common ground that Mr Farooq had taken over the business, the previous entity being a business run by his father, Mr Idris. It was unclear however whether Mr Idris had traded through a limited company or whether he had traded as a sole trader.

12. The claimant said that he wished to amend the claim in order to have it directed against Mr Farooq trading as Home Hardware Store. The address remained that in the current claim form. He confirmed that he would consider whether he wished to include Mr Idris as second respondent. If that was so he would confirm the address of Mr Idris in writing as well as confirming that he sought that he be added as a respondent. If, from any research he carried out, he established that Mr Idris had operated through a limited company then, if he wished the limited company added as a respondent he would confirm that, also confirming the address for the limited company. Again, this would be done in writing. He might do this in order to try to ensure that if Mr Farooq successfully argued that any responsibility which he might have existed only

after the time when he became employer of the claimant, the previous employer was then potentially found liable by the Tribunal for sums prior to that transfer.

13. I confirm that I was prepared to amend the claim so that the respondent became M Farooq trading as Home Hardware Store. The Clerk to the Tribunals is requested to note that on the records as the detail of the respondents, the address being that currently provided for the respondents. The Clerk to the Tribunals is also requested then to serve the claim form upon Mr Farooq at the address specified, giving him the usual period of 28 days in which to respond by presenting form ET3, if so advised.

14. After the period of 28 days has expired, consideration can be given to setting down a hearing in the case. It may be that setting that any hearing date is not possible for slightly longer. That might be so if, for example, the claimant looks to amend the claim to bring in a second respondent, whether Mr Idris or a limited company.

**Employment Judge: Robert Gall**  
**Date of Judgment: 21 January 2020**  
**Entered in register: 24 January 2020**  
**and copied to parties**