

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4105141/16

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Held In Glasgow on 30 November 2017

And In Chambers 20 March 2017

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Employment Judge: Ms M Robison

Mrs Maureen Morrison

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Claimant
Represented by:
Mr R Brown -
Solicitor

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1. Bellshill PO (UK) Ltd
t/a Keystore Post Office

1st Respondent
Not Present
& Not Represented

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2. Mohammed Hakeem

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2nd Respondent
Not Present
& Not Represented

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3. Mohammed Hakeem
t/a Keystore Post Office

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3rd Respondent
Not Present
& Not Represented

JUDGMENT

5 The judgment of the Employment Tribunal is that the correct identity of the employer is Mohammed Hakeem trading as Keystore, that is the third respondent. The claims against the first and second respondents are dismissed.

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REASONS

1. This case called for a preliminary hearing on 30 November 2017 to determine the identity of the employer.
- 15 2. Mr Brown represented the claimant, but no one appeared for or to represent any of the three respondents in this case, the solicitor originally instructed having intimated to the Tribunal that his firm had withdrawn from acting on 13 March 2017.
- 20 3. Each of the three respondents was advised by letter dated 11 October 2017 that a preliminary hearing would take place on 30 November 2017 at 10 am to determine the identity of the correct employer.
- 25 4. Efforts were made by the Tribunal administrative staff to contact Mr Hakeem on the telephone number stated on the ET3. Although Tribunal staff spoke to a Mr Mohammed Hakeem, he advised that there were four brothers of the same name. Tribunal staff advised that they were looking to speak to a Mr Mohammed Hakeem, known as Andy (as stated in the ET3 form) but they were informed that no-one of that name was available. Attempts were also
30 made to contact Mr Hakeem on his last known mobile number but without success.

5. In those circumstances, where the Tribunal had not heard from any respondent since August 2017, and given the delay in this case reaching this stage in proceedings, and in line with the underlying objective, I decided to proceed with the preliminary hearing, taking account of the documents lodged by the respondents and their solicitors originally instructed.
6. I then heard evidence from Mrs Morrison. It became clear during the course of her evidence that wages she had been paid by the first or second respondent had been paid into her bank account each month. However, no bank statements had been lodged. Given that these bank statements are likely to reveal the name of the entity which was paying her wages, I considered that they were likely to be of assistance to the Tribunal in determining the question of the correct identity of the employer.
7. In the circumstances, and given that Mr Brown had in any event made an application at the outset to lodge written submission in this case, I decided that, in line with the overriding objective to deal with cases justly and fairly, I would direct that efforts should be made to obtain the relevant bank statements, and that, if available, these should be lodged with the Tribunal by 17 January 2018, along with the written submissions.
8. Mr Brown lodged written submissions on 15 January 2018 and a second list of documents for the claimant including bank statements. In the written submissions, Mr Brown stated that the claimant was considering amending the ET1 to introduce a breach of contract claim, and he sought 21 days to do so. The claimant was required to lodge any amendment by 15 February 2018, by which time he had intimated that the claimant did not after all intend to amend her claim.
9. Consequently, there has been some delay in issuing this judgment, explained by the above events.

Findings in fact

10. On the basis of the evidence heard and documents lodged, the Tribunal finds the following relevant facts agreed or proved:
- 5 11. The claimant commenced employment as a sales assistant within the shop at Bellshill Post Office in May 1999. She was interviewed by, and subsequently employed by, Mr Mohammed Hakeem (an individual who is the second and third respondent). Mr Hakeem was known to the claimant, and to other staff, as "Andy". She was dismissed by Mr Hakeem in June 2016.
- 10 12. Throughout her employment the claimant dealt with Mr Hakeem whom she understood to be her employer and the owner of the business. She took instructions from him throughout her employment there.
13. However, over the years Mr Hakeem traded under various business vehicles for his own purposes, although he did not formally intimate any change of
15 employer to staff, except on one occasion.
14. When the claimant commenced employment, she understood the name of the business to be 4H Limited. She understood it to be a partnership between Mr Hakeem and his wife, her sister and husband. At that time, Mr Hakeem's brother in law was involved with the post office, and Mr Hakeem was involved
20 with the shop.
15. On 1 November 2005, she understood that the company name became Bellshill Postal Services Ltd. At the time Mr Hakeem told her that he was dissolving 4H Ltd and changing the name of the business to Bellshill Postal Services.
- 25 16. She was issued (document 1) with a statement of particulars of employment on 11 November 2005, which stated that her employer was Bellshill Postal Services Ltd.
17. Some time during 2010, Mr Hakeem's sister and brother in law left the business, which subsequently became known as MHH Retail. However, Mr
30 Hakeem's wife later also left to take care of a post office which they were also

running in Merchant City. Thus after that time, only Mr Hakeem was left running the business.

5 18. On or around 7 March 2014, Bellshill Postal Services Ltd dissolved (document 10). The claimant was not aware of the dissolution of the company or any change in identity of her employer.

10 19. The company Bellshill PO (UK) Ltd (the first respondent) was incorporated on 29 August 2014. Around the end of 2014/beginning of 2015, Mr Hakeem called a meeting of all staff in the office and advised that he was in financial difficulties and the business may have to fold. At that point, the staff were advised that the name of the company had changed to Bellshill PO (UK).

20. In or around November 2015, Mr Hakeem decided to refurbish the premises, at which time the premises name was changed to Keystore, who financed the refurbishment.

21. The claimant was dismissed on 7 June 2016.

15 22. She went to the CAB and they told her to write a letter appealing against dismissal. They drafted a letter to The Manager Keystore Ltd. (document 5). Mr Hakeem responded by letter dated 13 June 2016 (document 6) expressing surprise that she had written to The Manager Keystore. There was no reference to any company on that letter (document 6).

20 23. The claimant received monthly wage slips at the end of each month, and wages were paid through BACS. The claimant's bank statements from 21 December 2012 to June 2016 (excluding the period from 9 February 2013 to 22 December 2013 and 9 April to 19 November 2015) show that the payers were: from December 2012 to January 2013 MHH Retail Ltd; from 31 December 2013 to 31 December 2014 Postbell Ltd; from 30 January 2015 to 25 31 March 2015 and from 30 November 2015 to 31 March 2016 Bellshill PO (UK); and Keystore from 29 April 2016 to 31 May 2016.

30 24. The claimant wrote to HRMC to ask for confirmation of her employment history, but for the tax years from 2012 to 2016, these show only that she was in receipt of a pension and there was no record of her having worked there (documents 9 and 13).

25. The claimant lodged this claim in the ET on 5 September 2016.

Submissions for claimant

5 26. The claimant submits that the true identify of the employer is Mr Mohammed Hakeem trading as Bellshill Post Office. The identity of the employer is one of fact. The claimant set out proposed findings in fact based on the claimant's evidence.

10 27. The claimant submits that the only substantial communication the claimant had was with Mr Hakeem. It is accepted that the appellant would have been employed by the company Bellshill Postal Services Ltd given the statement of particulars, but after that date the picture is entirely unclear. Mr Hakeem continued to operate from the same premises. It would appear several companies have come and gone through the period of time that the claimant was employed in the premises. The fact that certain business vehicles were set up does not in itself make those vehicles the employer.

15 28. If the employer was to be an incorporated entity then it was incumbent on that entity to make clear to the claimant that it was the employer. While there was some limited communication between the claimant and Mr Hakeem concerning the company Bellshill PO UK Ltd, this was insufficient to stand that company as employer. There was no explanation concerning the
20 dissolution of Bellshill Postal Services Limited on 7 March 2014; there was no discussion as to another limited company taking over the premises and becoming the employer. He intimated that the new name for the business was Bellshill PO (UK). The question of corporate identity was never raised. That company was not incorporated until 29 August 2014, over 5 months after
25 the dissolution of Bellshill Postal Services Ltd.

29. The claimant was clear in her evidence that she was never told that Bellshill PO Ltd was her employer, and that name does not appear on her bank statements. She was told that the name Bellshill PO (UK) was the new name for the business.

30 30. It is also noted that as at the date of dismissal, the entity referred to in the banks statements and correspondence is Keystore.

31. The written evidence from the respondents is indicative of the confused nature in relation to identifying the appropriate employer, for example one document states that Bellshill PO (UK) Ltd ceased trading 30 November 2016 (10) and another 31 October 2016 (17).

5 32. It is reasonable for the claimant to infer that her employer is Mr Mohammed Hakeem trading in different business names throughout her period of employment. The only clarity the respondents exhibit is in relation to the particulars of employment dated 11 November 2005. That entity can no longer be the employer on dissolution on 7 March 2014. After that date it is
10 reasonable to infer that Mr Mohammed Hakeem is the employer.

33. Although the bank statements exhibit the name Bellshill PO UK that is not the name of the business entity as at the date of dismissal, that being Keystore. There is no indication in the bank statements that this is incorporated and the pay advice dated 30 April 2016 uses the entity Keystore (document 4) and
15 the letter from the claimant's employers purports to come from the entity Keystore (document 6).

Conclusions

34. In this case the claimant has pursued her claim against three respondents. The reason for that is the lack of clarity about who her employer was, which
20 is not surprising given the facts of this case. However the claimant worked throughout more than 16 years at Bellshill Post Office.

35. While none of the respondents attended the hearing, or sent anyone to represent them, I have taken information which was sent in by them or on their behalf into account in my determination of this case.

25 36. In the ET3 lodged on behalf of all respondents on 7 November 2016, it is stated that "the 1st respondent is a limited company that operates a retail unit and related services from premises at 244-266 Main Street Bellshill (the premises). The 1st respondent trades as Keystore. In addition to operating as a convenience store, the 1st respondent also operates a post office franchise
30 from the premises. The 2nd and 3rd respondents are the same individual, who is a director of the first respondent and is also employed as a manager at the

premises. The respondents submit that the 1st respondent was the claimant's sole employer. The 2nd and 3rd respondents would seek an order dismissing them as being named respondents in this claim".

5 37. By e-mail dated 23 November 2016, a solicitor instructed for all three respondents advised that the first respondent was the employer of the claimant as at the date her employment terminated (document 8); that the business was previously owned by Bellshill Postal Services Ltd; that due to financial difficulties that company ceased trading and the business was ultimately acquired by the first respondent [Bellshill PO (UK) Ltd]. No dates
10 were advised. The e-mail also stated that the business in which the claimant worked was renamed in April 2016 as "Keystore" which is a quasi-franchise brand that engages as "customers" the owners of convenience stores. This meant no change in the identity of the claimant's employer or the legal status of the 1st respondent.

15 38. By letter dated 3 April 2017, Ms Tracy Hakeem wrote, on paper headed up Bellshill PO (Sco) Ltd, including the e-mail address andy228@hotmail.co.uk, in reply to correspondence from the Employment Tribunal, that "Further to your letter dated 29 March 2017 which is addressed to Bellshill PO (UK) Ltd t/a Keystore [the first respondent], I can confirm that this company ceased
20 trading on 30 November 2016" (document 10).

39. Ms Hakeem sent another letter the same day on the same headed notepaper, (document 11), stating "Further to your letter dated 29 March 2017, which is addressed to Mohammed Hakeem Post Office [the second respondent], Mohammed Hakeem has never been involved with the post office, as there
25 has never been a company called Post Office. It is Mrs Tracy Hakeem that runs the Post Office at 224-226 Main Street Bellshill, which is a government franchise. I would be grateful if you would update your records to show this and stop any further communication letters coming in to the premises for him".

30 40. Mrs Hakeem sent a third letter stating "Further to your letter dated 29th March which is addressed to Mohammed Hakeem t/a Keystore [the third respondent], Mohammed Hakeem has never traded as Mohammed Hakeem

t/a Keystore from this premises. It is Mrs Tracy Hakeem that runs the Post Office at 224-226 Main Street Bellshill, which is a government franchise”.

41. By letter dated 18 August 2017, Mr Hakeem wrote to the Tribunal to stating:
(document 17) “Mr Mohammed Hussain Hakeem DOB 1/4/55 took over the
5 premises at 224-226 Main Street Bellshill... in the name of Bellshill PO (UK)
Ltd on 1 October 2016 due to two big financial loses and no records were
filed. A new company was started on 1 November 2016 under the name
Bellshill PO (SCO) Ltd and records have been filed from this date till 31 March
2017 to HMRC. As what happened with the company before 1 October 2014
io I have no knowledge of anything as I was not involved with the company. I
have never traded under any other company name other than the two I have
told you about from this premises and I have sent numerous correspondents
with regard to you about this”.

42. No further correspondence was received by the Tribunal from the
15 respondents.

43. Information obtained from HMRC in compliance with an order issued by this
Tribunal indicated that the claimant’ employer was 4HLtd until 2004/2005,
whereafter her employer became Bellshill Postal Services Ltd (a company
which was incorporated on 2 July 2004) (document 18). The HMRC has no
20 record of her having been employed by anyone after 2008/2009.

44. In this case the claimant was commenced employment in May 1999, and that
is accepted by the respondent in the ET1. She said that she was interviewed
and “hired” by Mr Hakeem, and she understood that he was trading at that
time as 4H Ltd. Indeed, the information provided to the Tribunal by HMRC
25 states that the claimant was employed by 4H Ltd between 2000 and
2004/2005. It may be that there was a transfer of undertakings at that time,
in November 2005, because the claimant was made aware that her employer
(from 11 November 2005) was Bellshill Postal Services Ltd through the
issuing of a statement of particulars.

30 45. The claimant did however become aware of a change around 2010, in that
Mr Hakeem’s brother and sister and law were no longer involved, but she was

not informed of any changes. However, it is interesting to note from the bank statements lodged (that she was able to obtain from 2012) that these state that her wages were being paid by a number of different entities after 2012, namely MHH Retail Ltd (which name the claimant did mention in evidence),
5 Postbell Ltd (not otherwise mentioned) as well as Bellshill PO (UK) (although stated to be a limited company) and finally "Keystore".

46. It may well be that the claimant continued to be employed by Bellshill Postal Services Ltd from 2010 but it is not clear, and there are no tax records. That company however was dissolved on 7 March 2014. The claimant was not
10 made aware of any change in her employer's identity at that time. If the claimant was still employed by them then, then she ceased to be at the time because the company did not exist.

47. The respondents now claim that the claimant was employed by the first respondent, Bellshill PO (UK) Ltd, until her dismissal. However, it is clear from
15 the evidence that that company was not incorporated until 29 August 2014. The claimant however continued to work for Mr Hakeem, and assumed that he continued to be her employer. Yet no company existed for at least five months, and the claimant was not informed that the name of her employer was changing.

48. I therefore did not accept that the information which the Tribunal was
20 furnished with by the respondents, either by them or on their behalf, was accurate.

49. I accepted the claimant's evidence that she was engaged by Mr Hakeem as an individual. As the respondents point out, both the second and third
25 respondents are in fact the same person, that is Mr Hakeem as an individual but trading under different names. Given the factual background, it is not surprising that there was confusion, but it is also clear that over the years Mr Hakeem has used a variety of trading names. This points to Mr Hakeem, as an individual, being the employer.

50. I have noted that latterly the shop was trading as Keystore. The claimant's
30 last payslip which she had retained was headed up Keystore. The bank

statements show that she was paid by "Keystore". Mr Hakeem wrote to the claimant with paper headed up Keystore. Given those findings in fact, I find that the claimant was employed by Mr Hakeem as an individual, trading as Keystore.

5 51. Accordingly, this claim will proceed against the third respondent. The claim against the first and second respondents is dismissed.

52. Date listing letters should now be issued to parties to set dates for a final hearing to determine the substantive issues in this case.

10 Employment Judge: Muriel Robison
Date of Judgment: 26 March 2018
Entered in register: 06 April 2018
and copied to parties

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