

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101683/17

Held in Glasgow on 19 December 2017

Employment Judge: Susan Walker

Mr D Wardrop

**Claimant
In person**

Viridor Waste Management Limited

**Respondent
Represented by:
Ms Irvine -
Solicitor**

JUDGMENT AND ORDER OF THE TRIBUNAL

At the Preliminary Hearing, the Employment Judge ordered that:-

- (1) "SThree Partnership LLP trading as Huxley Associates" be added as a respondent to the claim under rule 34 and that the claim be served on it at its registered office of 8th Floor, City Place, 55 Basinghall Street, London EC2V 5DX together with a copy of this judgment for information.
- (2) the claim against Viridor Waste Management Limited be struck out under rule 37(1)(a).

REASONS

- 1 The claimant has brought a claim of unfair dismissal and breach of contract (in respect of notice pay). The respondent (Viridor) had made an application

on 21 September 2017 for the claim to be struck out under rule 37. There were various grounds in the original application and in the Notice of Hearing but Ms Irvine confirmed that she was only insisting on rule 37(1)(a) that the claim had no reasonable prospect of success. She also applied for the claim to be dismissed under rule 27.

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In discussion with the parties, it was clear that Ms Irvine was unaware of the claimant's response of 25 September 2017 which was sent to Sian Strand who was representing Viridor at the time. A copy was provided to her.

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Ms Irvine's application was, in summary, that Viridor had not employed the claimant under a contract of employment and so there was no right to claim unfair dismissal. Secondly, even if Viridor was his employer, he did not have the required 2 years' service to be entitled to claim unfair dismissal. The claim therefore had no reasonable prospects of success and should be struck out.

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The claimant confirmed that he did not think he was employed by Viridor. However Viridor had terminated his contract. He considered that he was employed by "Huxley" and he understood that they had been unaware of the termination and were still seeking an explanation.

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Ms Irvine had provided a copy of letter from Huxley Engineering that confirmed that there was a contract between Viridor and Huxley Associates, a trading division of SThree Partnership LLP to provide the claimant's services.

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I explained that a claim of unfair dismissal could only be brought against a person's employer. Equally, the Employment Tribunal only has jurisdiction to hear a claim of breach of contract that relates to a contract of employment. It may be, depending on the details of the working relationship, that the claimant does not have a contract of employment with anyone and is either a "worker" or "self-employed". However, that can only be determined once evidence is provided about the contractual arrangements.

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7 At this point, the claimant has stated that he believes he was employed by
"Huxley" . In these circumstances, I considered it was appropriate to add
Huxley Associates as a respondent (under rule 34) and serve the claim on
them at the registered office on their notepaper. Depending on their response,
5 it may be that a further Preliminary Hearing will be required to establish
whether it employed the claimant or not.

8 Regardless of the outcome of that procedure, I considered that a claim
against Viridor has no reasonable prospects of success in circumstances
10 where the claimant has accepted it was not his employer and, in any event,
he was only working for them (in whatever capacity) for less than two years.
The claim against Viridor is therefore struck out.

15 Employment Judge: Susan Walker
Date of Judgment: 19 December 2017
Entered in register: 21 December 2017
and copied to parties

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