



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102981/2020

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Held via written submissions on 8 February 2021

Employment Judge R Gall

10 DR

Claimant
In Person

15 AA Plc

Respondent
Represented by:
Ms S Humphrey -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondents are properly identified as Automobile Association Developments Limited, that entity having been the employer of the claimant. That entity is substituted as respondent in the case for the respondents as initially specified in the claim form, AA PLC.

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REASONS

Background

1. This is a claim brought in which the claimant alleges unfair dismissal and discrimination. The claim was presented on 29 May 2020. The respondent in the claim was specified as "AA PLC". The respondent as named in the ACAS Early Conciliation Certificate ("ECC") was also that entity, AA PLC.
2. When submitting form ET3 giving their defence to the claim, the respondents stated that the correct respondent was in fact "Automobile Association Developments Ltd". That company is referred to in this Judgment as "AADL". That entity, they said, had been the employer of the claimant. If the Tribunal

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accepted that was so, then the claim should not be permitted to proceed, they stated. This was as no ECC existed in respect of a claim against AADL. A defence to the substance of the claim was also set out.

3. A Preliminary Hearing (“PH”) for case management purposes took place. That
5 was on 26 August. At that PH the question of the correct respondent was discussed. The claimant’s position was that his employer had been AA PLC. The claim had been brought against the correct entity. The respondents maintained their position that the claimant’s employer had been AADL.
4. It was agreed at that PH that there would be a further PH to consider the
10 identity of the claimant’s employer and, if relevant, also to consider the jurisdictional point as to the absence of an ECC in relation to AADL.
5. This PH is the PH anticipated at the case management PH. It was agreed that
15 the point would be dealt with on written submissions from the parties. A file of documents was submitted for this by the respondents. References in this Judgment to page numbers for documents are references to that file. The claimant did not produce any documents with his submissions.
6. By email of 26 August at page 7 of the file, the claimant made an application
20 to add AADL as second respondents. He said he had correspondence in relation to his employment which had AA PLC at the bottom. He held shares in AA PLC in terms of an employee incentive scheme. He stated he believed that either of the two entities may be liable for the claim he made.
7. The respondents opposed this application. They set out their reasons by letter
25 sent by email on 9 September 2021 (pages 8 and 9 of the file). Their position was that the claimant continued to assert that he was employed by AA PLC. Their position was that his employer was AADL. The name of the respondents could and should be changed to AADL, subject to one important proviso. That proviso was that the respondents argued that the Tribunal should not permit the claim to be advanced against AADL due to the absence of an ECC certificate in relation to that entity. If however the Tribunal took the view that
30 the claim could competently proceed against AADL, then the respondent could be changed to become AADL.

8. The claimant responded on 11 October by letter which appeared at page 11 of the file. He referred to his payslips which said "AA". His P60 said "The AA". His P45 showed, he said, the "department or branch of employment" as AADL, however the employer section had "the AA". The claimant also referred to a letter he received at time of an application made by him for a mortgage. The letter was "on AA paper with AA PLC at the bottom", he said. In April 2020, he said he had received a letter from AA human resources, the letter having AA PLC at the bottom of the page. AA policies applied to personnel of AA PLC, the claimant said. He also referred to the point made above as to his participation in an employee incentive scheme. No documentation was sent with that letter. The documentation mentioned, forms P60 and P45, the letters and any information about the employee incentive scheme are not before me for this PH.
9. The respondents replied through an email from their solicitors of 2 November 2020. That appeared at pages 15 and 16 of the file. Their position was that AA PLC should be removed as respondent, with AADL being "listed as the sole respondent in its place". This was as AADL was the claimant's employer, they said. They said that the claimant had initially been employed by the Automobile Association Ltd. In 2013 there had been a transfer of business between group companies, it was stated. All employees in the patrol force, including the claimant, had moved, their employer becoming AADL. That had been communicated to those affected. The claimant's P45 gave AADL as his employer. The letters relating to disciplinary matters had been sent on behalf of AADL. The name of the respondent "should simply be corrected to AADL", the letter said. There was no need for formal application to amend. The respondents confirmed that they were content for the point to be dealt with on the basis of written submissions.
10. A reply was sent by the claimant on 16 November 2020. A copy of that reply appeared at page 20 of the file. The claimant reiterated his position as being that AA PLC should remain in the claim. He believed that his employer had been AA PLC "with AADL being the department where he worked "as per my P45".

11. The respondents further communicated by email of 25 November, a copy of which appeared at pages 21 and 22 of the file. They repeated their position that the claimant was employed by AADL. It had been accepted by the claimant, they said, that AADL were shown as employer on his P45. They again requested that the name of the respondent be changed to become AADL. They requested the removal of AA PLC as respondents.
12. Parties were then informed that the question of the correct identity of employer would be dealt with written submission. That was detailed in the letter from the Tribunal of 2 December, pages 23 and 24 of the file. Any further submissions were to be received by 9 December 2020.
13. The final communication from either of the parties was that of 9 December 2020 from the claimant, page 26 of the file. He disputed the assertion which the respondents had made that he had confirmed that AADL were his employer on the P45. He said that his P45 showed AADL as department or branch, with the details certified as correct by "The AA". The legal name for the AA was AA PLC, the claimant said. As he claimed discrimination, his view was that AA PLC should remain as a respondent as owners of the AA policies, with AADL being added as respondents.

The issue

14. The issue for the Tribunal was to identify the party potentially liable in this claim as the claimant's employer.
15. If the party potentially liable was AADL, the Tribunal also required to consider whether there was any issue as to the claim proceeding against that entity, given the issue of the ECC where the respondent was named as AA PLC.

Applicable law

16. A claim of unfair dismissal is properly brought by a claimant against his former employer. The Employment Rights Act 1996 confirms that liability rests with a former employer who has unfairly dismissed an employee.

17. A claim of discrimination also lies, in the circumstances of this case, against the former employer. There is no attempt to bring in an individual as a respondent.
18. If amendment was to be required to result in there being an additional respondent, then the provisions of Rule 34 are of relevance. The principles involved in consideration by a Tribunal of an amendment application are set out in the case of *Selkent Bus Co Limited v Moore* 1996 ICR 836.
19. The case of *Mist v Derby Community Health Services NHS Trust* 2016 ICR 543 ("*Mist*") is relevant in consideration of the question of whether a second or fresh ECC is required in circumstances where a new respondent is brought into a claim which is already before the Tribunal.

Submissions

20. The points made by each party were as noted above.

Discussion and Decision

21. There are no facts found in this case as no evidence were heard. There were certain elements however in n the correspondence referred to above which were agreed.
22. Thus, the claimant worked in an organisation commonly known as the AA. There were two separate limited companies, AA PLC and AADL. Form P45 had been completed showing AADL as the branch or department. There had been reference on it to "the AA". It was not said by the claimant that AA PLC appeared on this form. Similarly it was "the AA" who appeared on form P60, the claimant said, rather than AA PLC.
23. I had no copy or either of those documents. I had no copy of the claimant's payslips. Those payslips were said by him to say "AA". His employer was said by the respondents to have initially been Automobile Association Limited. Due to internal changes, that had altered, with his employer becoming AADL.
24. I accepted that as far as the claimant was concerned, he was employed by a body he referred to as the AA. His submissions contained sufficient

confirmation, as far as I was concerned, that his employer was not AA PLC. The high point of any such assertion was when he said that he was part of an employee share incentive scheme of AA PLC. That may or may not be a share incentive scheme for employees within the companies which are under the AA PLC umbrella. It is difficult to say much about it as I did not have any papers in relation to it. On its own, it was not enough to persuade me that AA PLC was the claimant's employer.

25. Rather, I came to the view that the claimant's employer had been AADL. He referred to that company as appearing on his P45. Given that the name of the limited company appeared, it did not seem to me that this was a reference to a department within a company. It appeared to be a reference to a separate limited company. That company was his employer in my view.

26. In a working relationship there is an employee and an employer. The claimant in this case was the employee. One party would have his employer. Based on the information before and the submissions I received, I concluded that the employer was AADL.

27. The respondents in the claim as brought, AA PLC, were not pointing to a different entity altogether and seeking that responsibility for any potential liability was avoided. They were, it seemed to me, seeking to ensure that the claim was directed at, and then defended by, the correct corporate body which had been the employer of the claimant.

28. Whilst initially the respondents may have been taking a point that amending to direct the claim against AADL saw a challenge open to them as there was no ECC in relation to AADL, I did not understand them to be insisting upon that if AADL was substituted for AA PLC as respondent in the claim. If they do insist on such a position, it is my view that *Mist* is authority for the proposition that where an attempt is made to bring in new respondent to a claim already under way, the point for the Tribunal to consider is that of permitting/refusing the application to amend. It is not possible to rule out such a new respondent being added by pointing to the absence of an ECC in relation to that proposed new respondent. The claimant is not in that scenario

a prospective claimant and so no new ECC is required. The legislation does not require the claimant to seek such a new ECC in that circumstance.

29. The respondents did not oppose the respondent becoming AADL. That is, on the information I had before me, the company which was the claimant's employer.
30. I understood the claimant's wariness in accepting that he should agree to the claim proceeding against AADL, without inclusion as a respondent of AA PLC. He expressed concern that the respondents might be seeking to have the claim directed against AADL and would take the ECC point resulting in his claim being unable to proceed at all.
31. As I say, that is not my impression of what the respondents ask be done. If they do take any point in relation to there not being an ECC in relation to AADL, I do not regard that as having substance, given *Mist*.
32. It is my view that the claimant's employer and the party therefore against whom the claim is properly directed in AADL. I therefore confirm that the respondent's name is changed to AADL. That is a substitution of a party in terms of Rule 34. No ECC is necessary in relation to AADL. The claim may therefore continue.
33. I did not see a basis on which AA PLC would properly remain as a respondent in the claim. They were not the claimant's employers. They cannot therefore be liable for his dismissal, if unfair. Equally I did not a basis on which they were properly in the claim as respondents in relation to the claims advanced in terms of the Equality Act 2010. The fact that AADL employees may have been subject to policies prepared by AA PLC and in place for employees of AA PLC or perhaps all group companies, did not forma basis on which it could be properly claimed that AA PLC was the claimant's employer or that AA PLC might be liable under the Equality Act 2010.
34. I could understand the claimant's reason for initially raising this claim as he did. His employer's identity having been clarified and determined, the claim will now proceed against AADL.

Next steps

35. As I understand it, the issue of whether the claimant was at the relevant time disabled in terms of the Equality Act 2010 requires to be resolved. That might happen informally by acceptance of the position by the respondents on sight
5 of relevant medical information/reports. It might be a further PH, where evidence would appropriately be heard, will require to be set down. Parties are to clarify within 21 days whether medical records are to hand and whether therefore it is possible for a view to be taken in relation to whether or not the claimant was, at the relevant time, disabled in terms of the Equality Act 2010.
10 Alternatively, if more time is required to obtain and consider any medical records that should be confirmed within that time, with information being given as to where things are in terms of obtaining the necessary medical information. If the information is to hand then parties are to confirm within that time whether a PH in relation to disabled status is necessary or whether
15 arrangements can now be made for the hearing. If a hearing can now be arranged a case management PH will be set down to determine the appropriate matters.

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Employment Judge: Robert Gall
Date of Judgment: 9th February 2021
Entered in Register: 17th February 2021
Copied to Parties