



# EMPLOYMENT TRIBUNALS

**Between:**

Miss S Hodgkinson

**and**

(1) Woods Catering Staffordshire  
Limited (in liquidation)  
(2) Mr Neil Wood

**Claimant**

**Respondents**

## **Record of an Open Preliminary Hearing at the Employment Tribunal**

**Held at:** Midlands West

**On:** Wednesday 3 August 2022

**Before:** Employment Judge Faulkner (sitting alone)

### **Representation**

**For the Claimant:**

Miss A Hodgkinson (lay representative)

**For the First Respondent:**

Did not attend

**For the Second Respondent:**

Did not attend

## **ORDERS**

1. The question of whether the Claimant was at the relevant times a disabled person within the meaning of the Equality Act 2010 could not be determined at this Hearing.
2. Case Management Orders were made and are set out in a separate record.
3. The Hearing was then adjourned.

# REASONS

1. This Hearing was listed to determine the question of whether the Claimant was a disabled person within the meaning of the Equality Act 2010 (“the Act”). She was ably represented by her daughter. In the circumstances set out below, neither Respondent was in attendance or represented.
2. The Claimant’s Claim originally named the Second Respondent, Neil Wood, as the sole Respondent. The complaints, later identified by Employment Judge Wedderspoon (see below), were of failure to make reasonable adjustments, disability harassment (by Mr Wood) and failure to pay holiday pay. The Claim was served on Mr Wood accordingly.
3. A Response was filed on Mr Wood’s behalf by Peninsula, with an indication that the First Respondent Company was the correct Respondent to the Claim. By correspondence sent to the Tribunal on 22 December 2021, the Claimant asked that the Respondent be changed to the Company, so that at that point it became the sole Respondent to the Claim.
4. At a Case Management Hearing before EJ Wedderspoon on 11 March 2022, it was agreed that the Respondents to the Claim would be both the Company and Mr Wood. EJ Wedderspoon’s Case Management Summary is headed accordingly. In the remainder of this document, I will refer to the two Respondents as the First Respondent and Second Respondent respectively.
5. EJ Wedderspoon’s Case Management Summary and Orders, which included confirmation that there would be an Open Preliminary Hearing (“OPH”) on 4 July 2022 to determine the question of whether the Claimant was a disabled person, were sent to the Claimant and to Peninsula. It could reasonably be expected that Peninsula would inform both Respondents of what had transpired in the Hearing before EJ Wedderspoon. At around the same time, notice of the OPH was sent to the Claimant and Peninsula, but naming only the Claimant and the First Respondent as the parties to the case. All subsequent correspondence from the Tribunal has, in error, continued to refer only to the Claimant and the First Respondent in the same way. On 31 March 2022, the First Respondent entered into creditors voluntary liquidation.
6. By a Judgment dated 20 June 2022, Employment Judge Flood struck out the First Respondent’s Response, because it had not been actively pursued. On the following day, Peninsula came off the record, referring to the appointment of liquidators for the First Respondent and providing their contact details. In doing so, Peninsula evidently overlooked the fact that the Second Respondent was also a party to the proceedings. At around the same time, the First Respondent’s liquidators indicated that they did not intend to defend the Claim. On 24 June 2022, Employment Judge V Jones directed that all future communications should be sent to the liquidators.
7. The OPH on 4 July 2022 took place by video. Employment Judge Algazy decided that he was unable to proceed because of the state of the documentation and directed that a Notice of Hearing be sent to the parties for the OPH to take place on 3 August 2022, in person. That Notice of Hearing was sent to the First Respondent’s address,

not to the liquidators; it was not sent to the Second Respondent, the Tribunal evidently overlooking his being a party to the Claim.

8. The upshot of all of the above is that the matter came before me to determine the question of whether the Claimant was a disabled person, with no expectation that the First Respondent would attend – though it remains entitled to receive decisions and notice of any hearings – but with the Second Respondent a live Respondent to the proceedings (because it is only the First Respondent which has had its Response struck out) and with no indication that he had been properly served with Notice of the Hearing.

9. The question of whether the Claimant was a disabled person is of course highly relevant to whether she is able to pursue complaints of failures to make reasonable adjustments. Pursuant to section 110 of the Act, if there was any such failure, it is possible that the Second Respondent may be liable for it. It is also highly likely that the question of whether the Claimant was a disabled person is relevant to whether she is able to pursue complaints of disability harassment, complaints which lie squarely against the Second Respondent as well as the First.

10. Although the Second Respondent could have attended the aborted OPH on 4 July 2022 (because as stated above it can be reasonably expected that Peninsula informed him about it) and did not do so, he was plainly entitled to notice of this Hearing and it is far from clear that he was sent it; in fact, he fairly plainly was not. Given what is stated at paragraph 9 above, he is entitled to be heard – should he wish to be – on the question of whether the Claimant was a disabled person, or at least to be made aware that this question is going to be determined.

11. For those reasons, I decided that I could not proceed to determine that issue today, that is without the Second Respondent being aware of the Hearing and being given an opportunity to attend it. A further Hearing has been fixed for this purpose, notice of which will be sent to all of the parties. Case Management Orders were made to ensure the parties are ready for that Hearing, and I also determined amendment applications by the Claimant in relation to further complaints against the First Respondent. Those matters are recorded separately.

12. It is much to be regretted that a hearing on this question has been adjourned for the second time. I make clear, as is evident from what is summarised above, that this adjournment was through no fault of the Claimant.

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Employment Judge Faulkner  
Date: 4 August 2022