Case No: 2300627/2021
2302103/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr M Bramall

Respondent: **(1) Flow Logistics Limited**
(2) Amazon EU Sarl, UK Branch
(3) Amazon UK Services Limited
(4) Amazon Online UK Limited
(5) Amazon Web Services UK Limited
(6) Amazon Logistics UK Limited

and

Nexus Workforce Ltd t/a Flow Logistics

Heard at: **London South (CVP)** **On:** **29 September 2022**

Before: **Employment Judge A.M.S. Green**

Representation
Claimant: Mr N Roberts - Counsel
For the Respondent (Nexus): Mr D Reade KC - Counsel

RESERVED JUDGMENT ON PRELIMINARY ISSUE

1. The claim against the first respondent, having no reasonable prospect of success, is struck out.

2. Being out of time, the Tribunal does not have jurisdiction to hear the claim against the respondent (case ref: 2302103/2021).

REASONS

1. On 11 February 2021, the claimant presented a complaint to the Tribunal citing multiple respondents including a company identified as Flow Logistics Ltd. The

remaining respondents are variously identified as entities under the Amazon "umbrella." The claimant claimed that he was unfairly dismissed and also claimed holiday pay and "other payments." The claim reference number provided by the Tribunal is 2300627/2021 (the "First Claim").

2. On 26 March 2021, the claimant presented a complaint to the Tribunal citing Nexus Workforce Ltd t/a Flow Logistics as respondent ("Nexus"). The claimant claimed that he was unfairly dismissed and also claimed holiday pay and "other payments." The claim reference number provided by the Tribunal is 2302103/2021 (the "Second Claim"). In the section of the claim form entitled "additional information" the claimant explained why it was necessary to proceed with the Second Claim as follows:

> *The Claimant has an existing claim against six respondents in the South London Employment Tribunal(claim no. 2300627/2021). The First Respondent to these proceedings is an entity called Flow Logistics Ltd. On 25 March 2021, the Claimant's representatives received an email from the representatives of Nexus Workforce Ltd t/a Flow Logistics, stating that this is the entity that engaged the Claimant.*
>
> *As a result, the Claimant is also submitting this claim against Nexus Workforce Ltd t/a Flow Logistics. For ease of reference, the Claimant has referred to this entity as the Seventh Respondent in the Grounds of Claim attached to this ET1.*
>
> *We should be grateful if this claim could be transferred to the South London Employment Tribunal, for case management with the Claimant's existing claim.*

3. Nexus has entered appearance in respect of the Second Claim. In its grounds of resistance, Nexus submits that the Tribunal does not have jurisdiction to hear the claimant's claims because they are time-barred and, accordingly, it applied for the claims to be dismissed on the following grounds:

> *1.1 The Claimant's last working day as a self-employed contractor at the Respondent was 4 September 2020 as confirmed at paragraph 59 of his Grounds of Claim;*
>
> *1.2 Accordingly, the Claimant was then required to submit any claims in the Employment Tribunal by no later than 3 December 2020;*
>
> *1.3. The Claimant commenced Acas Early Conciliation in respect of the Respondent on 26 March 2021 by which time his claims were already time-barred; and*
>
> *1.4. The Claimant then submitted his claims to the Tribunal on 26 March 2021, almost four months out of time.*

4. Nexus disagreed with the claimant's contention that it was not reasonably practicable for him to present his claims against Nexus in time because he did not know that Nexus was the correct entity that engaged him. Nexus pleads the following:

2.1 On 2 April 2020, the Claimant signed a Consultancy Agreement confirming that the client was 'Nexus Workforce Ltd t/a Flow Logistics';

2.2. On 5 May 2020, the Claimant signed a policy confirmation document confirming that he had received and read a number of the Respondent's policies which all stated 'Nexus Workforce Ltd t/a Flow Logistics' on each page; and

2.3. During the Claimant's engagement as a self-employed contractor at the Respondent he submitted invoices for payment on a weekly basis. Each weekly payment the Claimant received in settlement of these invoices was received on his bank statements from 'Nexus Workforce Ltd.'

5. On 7 April 2022, Employment Judge Webster ordered that the First and the Second Claims should be joined and heard together.

6. This Preliminary Hearing was listed to consider the following:

…was any complaint presented outside the relevant time limits in the Employment Rights Act 1996 and the Equality Act 2010 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Further or alternatively, because of those time limits (and not for any other reason), should any complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should one or more deposit orders be made under rule 39 on the basis of little reasonable prospects of success? Dealing with these issues may involve consideration of subsidiary issues including: whether it was "not reasonably practicable" for a complaint to be presented within the primary time limit; whether there was "conduct extending over a period;" whether it would be "just and equitable" for the tribunal to permit proceedings on an otherwise out of time complaint to be brought; when the treatment complained about occurred.

For the avoidance of doubt, the claimant has not presented any claims under the Equality Act 2010. Consequently the reference to that statute is erroneous and has not been considered.

7. Counsel provided the Tribunal with skeleton arguments. I note that Mr Roberts was also seeking leave to amend the First Claim to substitute Nexus as the first respondent. We worked from a digital bundle that was supplemented by further disclosure. I heard oral submissions from Mr Roberts and from Mr Reade.

8. In his skeleton argument, Mr Roberts narrates the relevant facts of the case as follows:

3. The relevant facts of this case are straightforward. C brought a claim in time. In doing so, he assumed the name of his employer was "Flow Logistics" (which it is – albeit that is its trading name). His error was to put the word "ltd" after that name when bringing his claim. Upon him becoming aware of the correct legal name of his employer (the following month) he

made a prompt claim (within one day) correctly naming that entity. He has also since made a substitution application.

9. Mr Roberts then submits that the substitution application should be allowed and that the ordinary principles relating to amendment should apply. The claimant made a genuine mistake which was corrected early in the litigation. There was never any doubt that Nexus was the intended respondent who had early notice of the claim. He submits that according to caselaw, time limits either have no relevance at all or they are just one factor in the more important balance of hardship assessment. Regarding hardship, he submits that Nexus have not pointed to any material hardship and allowing the substitution. In contrast, in not allowing substitution, the prejudice to the claimant is significant.

10. Mr Roberts submits that, in the alternative, if the Tribunal is not minded to allow the substitution, the claimant pursues the Second Claim on the grounds that it was not reasonably practicable and it was then brought within a reasonable period.

11. In his skeleton argument, Mr Roberts narrates the circumstances leading to the claimant's misidentification of respondent. In the First Claim the claimant understands that "Flow Logistics" is only a trading name. Its legal name is not apparent from publicly available documents or most information that was made available to the claimant. In particular:

    a. The claimant was told and understood that he worked for Flow Logistics.

    b. The claimant's clothing was marked "Flow Logistics."

    c. The claimant's invoices, the terms of which were generated by external companies (Koala and Nova) on the instructions of Flow Logistics, were directed to "Flow Logistics" [215-232].

    d. Nexus' website is exclusively labelled with "Flow Logistics." There is no reference to Nexus Workforce Limited. The website does not provide details of any company number or address [234-240].

    e. All of its emails do not refer to Nexus Workforce and only refer to "Flow Logistics."

12. Mr Roberts then refers to two items relied upon by Nexus namely:

    a. Two documents signed by the claimant giving the Nexus' full legal name. The first is a consultancy agreement signed by the claimant on 2 April 2020 [148]. The second is a policy confirmation signed by the claimant on 5 May 2020 appending policies, some of which bear the full name of Nexus in their footers [158]. However, the majority of documents do not refer to the full legal name. The documents are adumbrated in a footnote in the skeleton argument. In response to this, Mr Roberts argues that the claimant was never given a copy of the documents after he signed them [140 and additional disclosure]. The claimant was never given a copy of his contract. Nexus has not provided evidence that the claimant was given a copy of these documents to retain.

b. The claimant's bank statements recording payments from an entity called "Nexus Workforce LT" [214]. Mr Robert submits that this was the only mention of Nexus which the claimant could have had any awareness and, it is noted, that the full legal name of Nexus is not provided. He submits that there was nothing to connect this company with Flow Logistics and it is an example of a payroll company [140]. Third-party companies were used for invoicing such as Koala and Nova. This was in circumstances in which all of the respondents have used confusing corporate structures to engage delivery drivers (as set out in the particulars of claim). To illustrate the complexity of legal structures, Mr Roberts refers to the fact that Nexus' businesses once traded through a company called Flow Logistics Ltd [additional disclosure].

It is submitted that it is not apparently in dispute that there was a mistake in identifying Flow Logistics which was genuine and the claimant corrected the mistake almost immediately upon being notified of it and issued the Second Claim within one day.

13. Mr Roberts submits that in considering the substitution application in respect of the First Claim, the Tribunal must be satisfied that the mistake was genuine and not misleading. The Tribunal must be satisfied that the mistake was not such as to cause reasonable doubt as to the identity of the person the claimant intended to sue. The Tribunal must pay particular regard to all the circumstances of the case and in particular, to the balance of injustice or hardship caused by refusing or allowing the substitution. He refers to the well-established authority of **Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650.** Since **Cocking** the emphasis has been on the balance of hardship.

14. Mr Robert submits that if the First Claim was brought in time (as is the case here) time limits do not strictly apply to the amendment application and only fall for consideration as part of the overall balance of prejudice (**Enterprise Liverpool Ltd v Jonas [2009] UKEAT/0112/09/CEA**). He further submits that if the amendment is a pure substitution, without altering the basis of the case, do not full to be considered even as part of the balance of prejudice arguments (**Enterprise**).

15. Mr Robert submits that when considering the balance of hardship, Nexus must provide evidence of that hardship and not simply rely upon an assumption (**Vaughan v Modality Partnership [2021] ICR 535**).

16. Applying these principles to this case, Mr Roberts submits as follows:

a. The claimant made a minor error in identifying his employer. The name that he used transpires to be Nexus' trading name. This was a genuine mistake compounded by the fact that Nexus utilises almost "complete opacity as to its true legal identity." If the claimant had omitted the letters "ltd" from the First Claim form it is unlikely that this preliminary hearing would have been listed.

b. The claimant corrected the matter within one working day of becoming aware of the problem which was at a very early stage of the litigation.

c. The claimant is simply seeking a pure substitution without changing the basis of his claim and, therefore, time limits have no application. Alternatively, time limits are only one relevant factor in the balance of hardship.

d. The balance of hardship to the claimant in refusing his application is overwhelming because he will be deprived of all claims against his former employer. In contrast, there is no material prejudice to Nexus as it was apparently aware of the litigation at a very early-stage from another unnamed source. Nexus has not missed any case management steps. Nexus might reasonably be expected to be involved in the claimant's case against the Amazon companies given the close overlapping facts. Nexus in other similar litigation in which employment status is disputed. Nexus has not identified any prejudice suffered, as required.

17. Turning to the Second Claim, Mr Robert submits the following regarding time limits. He refers to the applicable legislation governing time limits in respect of each head of claim in paragraph 27. I do not propose to repeat these here.

18. The parties are agreed that the claimant's last day of work was 4 September 2020. All of the claims accrued at around 4 September 2020 and was subject to a primary limitation period of three months giving a deadline of 3 December 2020. In respect of the First Claim the deadline was extended by early conciliation giving rise to a new deadline of 12 February 2021. The First Claim was brought in time on 11 February 2021.

19. The Second Claim was presented to the Tribunal on 25 March 2021 (approximately six weeks later). All of the time limits are subject to extension where it was not reasonably practicable to bring the claim within the primary limitation period. Such claims should be brought within such further period as the Tribunal considers reasonable.

20. Mr Robert submits that it was not reasonably practicable for the claimant to bring his claims within the primary limitation period because he reasonably did not know the correct legal name of Nexus. He submits that a reasonable mistake of fact is a basis for extending the time limit and refers to the decision in **Machine Tool Industry Research Association v Simpson [1988] ICR 558**.

21. In the present case, the claimant's ignorance was reasonable because he genuinely only gained knowledge of the exact legal entity after expiry of the primary limitation period. He then brought his claim within a further reasonable period (one day).

22. Mr Roberts highlighted the key points in his skeleton argument in his oral submissions. He referred to the claimant's bank statements [additional disclosure]. These showed credit payments from "Nexus Workforce LT" and "We are Koala." None of the credit payments were from Flow Logistics. I was also referred to Companies House entries for Flow Logistics Ltd [additional disclosure] which indicated that it had been part of the same group of companies as Nexus.

23. Mr Roberts repeated the position regarding time limits and substitution of a party and referred to the decision in **Enterprise** to the effect that if there is simply substitution of a party without altering the basis of the case, time limits do not full to be considered even if claim has been brought out of time. If the claim had been brought out of time it was just one factor to be considered. The most important consideration for the Tribunal was the balance of hardship.

24. Mr Roberts submitted that the claimant had made a genuine mistake and he had always intended to sue Nexus.

25. In his skeleton argument, Mr Reade accepts that the First Claim was made in time. However, the claim against Nexus in the Second Claim is out of time. He submits that even if an application to amend the First Claim to bring in Nexus as a party was made it would face the same problem because amendments to add new parties or to add new claims are to be treated as being commenced at the date of the application to amend was made. He submits that amendments to a claim do not take effect as if made at the date of the original claim (the "relation back principle"). He submitted that there is no relation back principle. In this regard, Mr Reade relied upon the decision of the EAT in **Galilee v Commissioner of Police of the Metropolis UKEAT/0207/16**. Consequently, the time issue remains even if the First Claim is amended. Mr Reade then cites the relevant statutory provision for extending time in claims of this nature. He submits that the claimant must establish that it was not reasonably practicable for him to have brought his claim against Nexus by 4 December 2020 and that in bringing his claim against Nexus on 26 March 2021 he did so within such period as the Tribunal considers reasonable.

26. On the question of whether it was reasonably practicable for the claimant to bring his claim in time, Mr Reade noted that the claimant was able to instruct lawyers and bring his claim in time or at least initiate early conciliation by 4 December 2020 because he was able to do this in respect of the other respondents in the First Claim. The issue is whether it was not reasonably practicable to have identified Nexus as the correct contracting party against whom to bring a claim before 4 December 2020 in order that notification could be given to ACAS. Mr Reade relies upon the decision in **Palmer v Southend on Sea Borough Council [1984] ICR 372**. He submits that the substantial cause of the claimant's failure to bring his claim in time was because he erroneously identified Flow Logistics Ltd as the correct respondent rather than Nexus. He submits that the claimant cannot demonstrate that it was not reasonably practicable to have correctly identified Nexus for the following reasons:

    a. He was legally represented at least by 1 December 2020.

    b. A company search of Flow Logistics would have shown that it did not have a registered address which indicated any connection with where the claimant supplied his services to Nexus. Flow Logistics Ltd.'s registered office at the time would have been Folkestone in Kent. The claimant rendered his invoices to Nexus' office in Brighouse in Yorkshire.

c. Flow Logistics Ltd had only been incorporated in 2019. By December 2020 it had not filed accounts which was consistent with it being a trading entity.

d. Minimal enquiries would then have identified that Flow Logistics Ltd was not the correct respondent and that the correct respondent needed to be identified.

e. The claimant had signed an agreement with Nexus which designed it as "Nexus Workforce Ltd t/a Flow Logistics" [148-156].

f. The claimant signed for receipt of various policies on 5 May 2020 [158]. At various points, those policies record them as being policies of Nexus Workforce Ltd t/a Flow Logistics.

g. The payments that were made to the claimant's bank account on the basis of invoices that he submitted were made by Nexus Workforce Ltd. A company search of that entity would have shown that its registered office was at the address printed on the submitted invoices.

h. The claimant had an email address but there seems to have been no letter before action seeking to identify the correct respondent.

27. Turning to the question of submitting the claim within a reasonable time, Mr Reade referred to the fact that the claimant had been asked to produce his bank statements. I note however, that these have now been provided. Furthermore, it was not known whether there was correspondence with Flow Logistics Ltd whether they made clear that they had no connection with the claimant or his work. If they did, this is material to when the claimant brought the correct claim.

28. Mr Reade highlighted the key points of his skeleton argument and made further oral submissions. He narrated the key points in the **Galilee** decision and relied upon this as authority for the proposition that there is no relation back doctrine that allows the claimant to substitute Nexus without application or consideration of time limits. If an amendment is allowed, it does not date back in time to when the claim form was originally submitted. He submitted that time runs from the date when the amendment was accepted. Mr Reade acknowledged that it was open to the Tribunal to allow the amendment and hold over the question of time limit to a future date, such as the final hearing. This was particularly relevant to discrimination claims, where time limit questions often arise in matters such as continuing acts.

29. Mr Reade submitted that the First Claim was brought in time when the claimant had legal representation. Consequently any argument about the claimant suffering from lack of resources or an inability to understand his rights had no merit.

30. The claim form used to initiate the First Claim identified an entirely different company to Nexus based at a different address. The claimant's solicitor had not explained how it went about identifying that address. However, a search of the Companies House register would have provided that information. Someone

had decided that Flow Logistics Ltd was the respondent [241]. The Companies House information indicated that the registered office for that company had changed in 2020. Furthermore, it had never filed accounts until August 2021. Anyone looking at the information at Companies House would know that Flow Logistics Ltd was different to Nexus.

31. The claimant had rendered his services in Stoke which is a long way from Folkestone where Flow Logistics Ltd is based. He had provided his invoices to Nexus' address in Brighouse. There is nothing about the documentation to which he refers that shows a connection with Folkestone or Flow Logistics Ltd.

32. On 16 February 2021, the claimant's solicitor emailed Flow Logistics setting out his grievance in response to his complaint that nobody from that organisation had communicated with him [134]. On 25 March 2020, Nexus' solicitor wrote to the claimant's solicitor indicating no claim had been made against their client in the First Claim.

33. Mr Reade submitted that the claimant had sued the wrong company. It was a company that was not trading and he had not taken steps to find out who the correct company was.

34. Mr Reade referred to the consultancy agreement signed by the claimant [148]. This clearly identified Nexus as the client. Mr Reade accepted that Nexus had been asked for a copy of this agreement by the claimant but could not find he request for it. I was also referred to the receipt for the policy documents signed by the claimant [158]. When he signed that document, he was confirming that he had received the policies referred to therein and that he had read them. He accepted that not all of the policies referred to had the full legal name for Nexus but estimated that approximately 50% of those policies did [159].

35. Turning to the bank statements provided by the claimant, Mr Reade accepted that they showed a payment from "Nexus Workforce Lt" which was clearly an abbreviation for "Ltd." Furthermore, had he searched the Companies House listing, the claimant would have found out that the registered office address was the same as the address where he sent his invoices.

36. Mr Reade submitted that Flow Logistics Limited was a completely different company to Nexus. It had been dissolved in March 2019 which was one year before he signed the documents with Nexus. Had the claimant completed his due diligence his belief that the correct respondent was Flow Logistics Ltd or Flow Logistics Limited would not have been sustainable.

37. Mr Reade submitted that the application to amend to allow the substitution of a party required me to determine the limitation argument.

38. In response, Mr Robert submitted that notwithstanding the decision in **Galilee** I should refer to the earlier established line of authorities on amendment. He submitted that **Galilee** could be distinguished as it dealt with dealing with amendment applications in circumstances where it was not known whether limitation had passed because of continuing acts. I was invited to focus on the balance of hardship as the key issue. If it was a pure substitution, with no

amendment to the claim, the authorities running from **Cocking** and **Enterprise** should be followed and not **Galilee**.

39. I now turn to the law. The Tribunal Rules provide tribunals with a wide discretion to add, substitute and/or remove parties to proceedings. Under rule 34 a tribunal has the power, either on its own initiative or on the application of a party or any other person wishing to become a party, to add or substitute any person as a party. This power can be exercised where there 'are issues between that person and any of the existing parties falling within the jurisdiction of the tribunal which it is in the interests of justice to have determined in the proceedings. A Tribunal also has a corresponding power to remove any party apparently wrongly included.

40. The power to add, substitute and remove parties under rule 34, when read in conjunction with the general power to make case management orders conferred by rule 29, applies 'at any stage of the proceedings.

41. Apart from these specific provisions, the power to add or substitute respondents has always been available as part of the tribunals' general powers to regulate their own procedure (***Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650, NIRC)***. In that case the claimant claimed in his originating application that he had been unfairly dismissed by his employer, a subsidiary company, when in fact his true employer was the parent company of that subsidiary. At the hearing of the complaint, and after the time limit for making a complaint of unfair dismissal had expired, he sought leave to amend his originating application by substituting the parent company for the subsidiary. The employment tribunal allowed the amendment but only on terms that it carried the date when it was allowed to be made. As this date was outside the time limit, they held that the claimant was too late in claiming against the parent company. The NIRC reversed the decision, holding that the protection which respondents obtain from the time limit does not depend on when they first become parties to the proceedings, but on when the claimant's complaint is first presented to the tribunal. Here the claimant's complaint, both as originally presented and as intended to be amended, was the same, in that he claimed that he had been unfairly dismissed *by his employer*; therefore, as the original complaint was presented in time and was one which the tribunal had jurisdiction to hear and determine, it followed that they also had jurisdiction to allow the amendments which were necessary to enable them to do so. Sir John Donaldson, giving judgment, went on to specify the correct procedure to be adopted by tribunals in all cases where it is sought to amend the originating application whether by adding or substituting respondents or by changing the basis of the claim (at 656, 657):

> *1. They should ask themselves whether the unamended originating application complied with [rule 8(1) of Schedule 1 to the 2013 Regulations]: see, in relation to home-made forms of complaint, Smith v Automobile Pty Ltd [1973] 2 All ER 1105*,
>
> *2. If it did not, there is no power to amend and a new originating application must be presented.*

3. If it did, the tribunal should ask themselves whether the unamended originating application was presented to the [tribunal] within the time limit appropriate to the type of claim being put forward in the amended application.

4. If it was not the tribunal have no power to allow the proposed amendment.

5. If it was the tribunal have a discretion whether or not to allow the amendment.

6. In deciding whether or not to exercise their discretion to allow an amendment which will add or substitute a new party, the tribunal should only do so if they are satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intending to claim or, as the case may be, to be claimed against.

7. In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused."

42. This procedure has been generally approved and followed in subsequent cases (see, for example, ***Sheringham Development Co Ltd v Browne*** ***[1977] ICR 20, EAT***, ***British Newspaper Printing Corpn (North) Ltd v Kelly [1989] IRLR 222, CA***). It should also be read in conjunction with the additional guidance given by the EAT in ***Selkent Bus Co Ltd v Moore [1996] ICR 836***. In ***Kelly*** the Court of Appeal endorsed the injustice/hardship test set out in para 7 of the above passage, and held that, as there are no statutory time limits for applying for leave to amend, tribunals ought not to refuse leave simply on grounds of delay. Thus the tribunal in that case was held to have exercised its discretion wrongly where it refused an application because it was 'reasonably practicable' to have made it earlier. The absence of time limits was again emphasised by two different divisions of the EAT when allowing appeals from tribunals which had refused to allow new respondents to be added or substituted on the ground that the claims against the new respondents would be time-barred (***Gillick v BP Chemicals Ltd [1993] IRLR 437***, ***Linbourne v Constable [1993] ICR 698).*** As Lord Coulsfield said in ***Gillick***, questions of delay are merely matters to be considered by the tribunal in the exercise of its discretion. This point was further endorsed by the EAT in ***Drinkwater Sabey Ltd v Burnett [1995] IRLR 238***, when rejecting an argument that the joinder of a respondent after the time limit for making a claim against him has expired should only be permitted on grounds of misnomer—where the claimant has misnamed or misdescribed the party whom he intended to sue—and not where he has mistakenly decided to sue the wrong party, in the same way as the High Court exercises its analogous jurisdiction. The EAT concluded that the High Court rules have no application to the exercise of the tribunals' power to add or substitute parties, a power that is exercisable, in accordance with the principles in ***Cocking***, at any time, even after the relevant time limits have expired.

43. In **Galilee v Commissioner of Police of the Metropolis 2018 ICR 634**, EAT, the Appeal Tribunal held that it is not always necessary to determine time points as part of the amendment application. It also held that granting an amendment does not automatically deprive the respondent of any limitation arguments it might have in relation to the new claims. In its view, a tribunal can decide to allow an amendment subject to limitation points. This might be the most appropriate route in cases where, for instance, the new claims are said to form part of a continuing act with the original, in-time, claim, given the fact sensitive nature of determining whether there is a continuing act. It held that amendments to pleadings that introduce new claims or causes of action take effect for the purpose of limitation at the time permission is given to amend and there is no doctrine of 'relation back' (backdating any new claim added to the time when the original proceedings were commenced) in the procedure of the employment tribunal. According to the EAT, this approach was supported by the EAT in **Potter and ors v North Cumbria Acute Hospitals NHS Trust and anor 2009 IRLR 900, EAT**, and **Prest and ors v Mouchel Business Services Ltd and anor 2011 ICR 1345, EAT**, and therefore, to the extent that the reasoning in **Amey** and **Rawson** was based on the 'relation back' doctrine, those cases were wrongly decided and the EAT did not feel obliged to follow them. The EAT also held that 'the guidance given by Mummery J (as he then was) [in Selkent] and his use of the word "essential" should not be taken in an absolutely literal sense and applied in a rigid and inflexible way so as to create an invariable and mandatory rule that all out of time issues must be decided before permission to amend can be considered.'

44. Having considered the submissions and the applicable law, in respect of the application to substitute Nexus as a respondent in the First Claim, I am not persuaded by Mr Reade that **Galilee** is binding on this Tribunal. It can be distinguished in that the claimant in that case was seeking to amend his claim to add new claims of disability discrimination, harassment and victimisation. In the case before me, the claimant is not seeking to introduce new claims. He is simply seeking to substitute one respondent for another without altering the basis of his claim. I am justified in following **Cocking** and the subsequent line of authorities.

45. I must consider whether the claimant made a genuine mistake inciting Flow Logistics Ltd in the First Claim. I find as follows:

    a. It is common ground that the First Claim was presented in time.

    b. I have discretion to determine whether to allow the amendment to substitute Nexus as a respondent.

    c. I should only do so if I am satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intending to claim or, as the case may be, to be claimed against. I am not satisfied that the claimant made a genuine mistake in citing Flow Logistics Ltd as a respondent in the First Claim for the following reasons:

i. At the time when the First Claim was presented, the claimant was represented by Leigh Day, a firm of solicitors. This is not a case where there is an unrepresented claimant who is ignorant of his rights or unfamiliar with the mechanics of Tribunal litigation and the need precisely to design the respondent(s) in the Instance of the claim form.

ii. In section 2 of the claim form, the name and address of Flow Logistics Ltd has been provided. It is unclear how this information was obtained by the claimant or his solicitor. However, it is reasonable to infer that it would have been obtained by a search conducted online or in person at Companies House. In this regard, I have the benefit prior professional knowledge having been a litigation solicitor in private practice for nearly 30 years and it was customary to conduct such searches in preparing claims for clients to ensure that one identified the correct respondent.

iii. Flow Logistics Ltd was incorporated on 16 August 2019. It appears to have been a non-trading company for a significant period of time judging by its Companies House filing records [241]. This should have alerted the claimant or those instructed by him that this was potentially the wrong respondent given that his alleged employment started in April 2020 which was at a time when this company appears to be dormant or not trading.

iv. The claimant signed a consultancy agreement [148]. This clearly shows that the other party to that agreement identified as the "Client" is Nexus Workforce Ltd t/a Flow Logistics. The claimant alleges that he did not have a copy of this agreement at hand because he was not supplied one by Nexus. However, he could be taken to have remembered the name of the entity with whom he was contracting as this is an important document setting in place what was understood to be the basis of the relationship between the parties. It is the foundation of their relationship.

v. The claimant signed the Flow Logistics Policy Confirmation on 5 May 2020 [158]. In so doing that he confirmed that he had not only received but had read the policies listed therein. I note the following policies have the name "Nexus Workforce Ltd t/a Flow Logistics":

- Anti-bribery and Corruption Policy
- Substance Abuse Policy
- Anti-Harassment and Bullying Policy
- Equal Opportunities Policy
- Vehicle Safety, Security & Equipment Policy
- Religious & Disability Policy
- Pregnancy Policy
- Pay Policy

vi. The claimant's bank statements show that he was paid by an entity identified as Nexus Lt. I accept that other paying entities are also identified. However, I agree with Mr Reade that it is reasonable to infer that Lt could be an abbreviation of "Ltd."

vii. The claimant submitted invoices to Flow Logistics at an address in Brighouse which is the same address as Nexus. It is not the same address as that for Flow Logistics Ltd which is in Folkstone. He would, or ought to have been aware of that distinction when considering his claim and identifying the respondent.

viii. Nexus, like many businesses has a trading name. It uses the trading name "Flow Logistics". One can see why this would be displayed on things such as its website, stationery and clothing; it is a brand name. However, the full legal identity of the company should also have been displayed somewhere on the website to comply with the applicable legislation. I agree with Mr Roberts on this, after he brought it to my attention. I acknowledge that this is a factor that supports the claimant's position about being mistaken but it is, not in itself, determinative when one considers all of the other aspects that were or should have been in the claimant's knowledge at the time when he instructed his solicitor to prepare the claim form pointing to Nexus as the correct respondent.

d. I accept that refusing to allow the substitution will cause hardship to the claimant in that he will be denied an opportunity to litigate against Nexus in the First Claim. However, he had sufficient information to understand the correct identity of the respondent at the time he presented his claim to the Tribunal and, crucially, one would have expected him to have provided that information to his solicitors. If he did that and it is the case that a mistake has been made by his solicitors in circumstances where it should not have been made, then any redress would be against them for being denied an avenue of redress against Nexus. Furthermore, his claims against the other respondents in the First Claim are preserved and, presumably, will be put to proof.

46. For the foregoing reasons, I am not prepared to exercise discretion to substitute Nexus as a respondent in the First Claim. It follows that claim against the first respondent in the First Claim, having no reasonable prospect of success, should be struck out. The claimant has sued the wrong company which has no connection with the subject matter of his claim.

47. I now turn to the question of time limits in respect of the Second Claim. I do not accept that it was not reasonably practicable for the claimant to bring his claims within the primary limitation period For the reasons given above he could reasonably have known the correct legal name of Nexus at the time when he presented his claim to the Tribunal. He presented the First Claim in time, albeit against the wrong respondent. Whilst I acknowledge that a reasonable mistake of fact is a basis for extending the time limit, that principle is not engaged here. The claimant has not met the first requirement for extending time. There is no

need to consider the second requirement. The Tribunal does not have jurisdiction to hear the claim.

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Employment Judge Green

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Date 29 September 2022