EMPLOYMENT TRIBUNALS

Appellant: **Robert S Charles Ltd**

Respondent: **The Construction Industry Training Board**

Heard at: **Bristol (by video-VHS)** **On:** **2 September 2022**

Before: **Employment Judge Livesey**
Mr E Beese
Mr K Freeth

Representation:
Claimant: Mr Charles, Managing Director
Respondent: Mr Byrne, ITA Compliance Manager

JUDGMENT

The Appellant's training levy appeal is dismissed

REASONS

Introduction

1. By a Claim Form dated 24 March 2022, the Appellant brought a training levy appeal against the Construction Industry Training Board (CITB).

2. Directions were issued by the Tribunal on 13 June 2022 and this hearing was listed.

3. The Tribunal heard evidence from Mr Charles, the Managing Director of the Appellant business. It also received an agreed bundle of documents (R1) and any pages cited within these Reasons are to pages within that bundle unless otherwise stated. Citations are in square brackets.

The issues

4. The issues which fell to be determined were not entirely clear from a simple reading of the Claim Form, but the Respondent had attempted to summarise them within paragraph 36 of its submissions [117]. Mr Charles agreed that those were the points that he sought to raise by his appeal and those were

the matters which the Tribunal addressed.

Relevant facts

5. The facts in the case were not in dispute.

6. The Appellant company is listed on Companies House as being in business carrying out "*joinery installation*" work. It's website shows it to be a designer and installer of kitchens. When it first registered with the CITB, it described itself as a "*joiner carpenter*".

7. In correspondence with the CITB in June 2013, Mr Charles stated that the business was a "*retail showroom selling kitchens, bedrooms and bathrooms to the public. In our workshops we manufacture the products used in our business*" [125]. More recently, in 2022, he set out the number of employees who were engaged and what their roles were [136]. He gave more detailed evidence on that subject during the course of the hearing; the Appellant still employs 12 people, comprising 3 installers, 1 driver, 5 people who are in the workshop manufacturing kitchens, Mr Charles and another who design and sell the products and one part-time bookkeeper.

8. Five Levy Notices had been served by the Respondent in respect of the years of 2016 to 2020 [29-37]. None of them had been paid and the Appellant had made no returns to the CITB. The Notices had all therefore been estimated, although it was not suggested that the estimates were inaccurate. The Notices amounted to approximately £19,000, the last one having been dated 30 July 2021 in the sum of £1,998.

Relevant legal framework

9. Industrial Training Boards were established by the Secretary of State for Employment in the 1980s under the Industrial Training Act 1982. Their role was to ensure the provision of adequate quality training within certain industries. Two statutory Boards remain, one of which is the CITB.

10. The basic principle is that the CITB levies those within its industry to meet the expenses of the Board. The mechanism for the imposition of levies is through Levy Orders enacted under the Industrial Training Act 1982. The relevant Levy orders here were the Industrial Training Levy (Construction Industry Training Board) Orders 2015, 2018 and 2021.

11. Article 3 of the 2021 Order states that a "*levy is to be imposed on employers in the construction industry*". Further definition is provided in article 2 and reference is made to Schedule 1 of the 1964 Order, as amended in 1992 [70-73].

12. Article 5 required the Board to assess each "*construction establishment*" which is "*wholly or mainly engaged in the construction industry*". It appeared to be a mandatory requirement.

13. Article 7 set the current rates for assessment and article 10 states how assessments were to have been undertaken; on the basis of information supplied to the Board or, alternatively, on its "*reasonable estimate*" of an employer's liability.

14. Article 14 stipulates that notices are payable within one month of service but, in article 15, an employer was entitled to appeal against a notice within that same timescale. The article governs appeals "*against the assessment*" which, as Mr Byrne stated, enabled an appellant to run two arguments; whether they had been properly served with a notice (i.e. were rightly considered to have been in the scope) and/or whether the quantum of the notice was correct (i.e. whether the assessment had been conducted accurately).

Conclusions

15. Before coming to the for arguments raised by the Appellant, as summarised within paragraph 36 of the Respondent's submissions [117], there was an initial issue to deal with; the late service of the Claim Form and the Tribunal's jurisdiction to deal with it out of time.

16. The first Notice which the Appellant had failed to pay was dated 24 March 2017. The most recent was dated 30 July 2021. Under article 15 of the 2021 Order, the Appellant had one month from the date of the service of each Notice within which to bring an appeal. The appeal was therefore substantially out of time. The CITB, however, was well aware of the arguments which had been raised by the Appellant and wanted them aired before the tribunal and determined. Mr Byrne made it clear that it had therefore allowed the issuing of the appeal out of time as it was entitled to under article 15.

17. The Appellant's first point of appeal was that it was out of scope of the regime. It had contended that its main activity was not construction in accordance with the Order.

18. The CITB argued that the Appellant's activities included work of "*..alteration…of a building or part of the building*" as defined within paragraph 1 (a)(i) of Schedule 1 of the 1992 Amendment Order, as interpreted by Newman J in the case of *Mark Wilkinson Furniture-v-CITB* CO/1318/00 [85, 89, 91 and 93]. During his evidence, Mr Charles frankly conceded that the installation of a kitchen constituted the alteration of a room as part of the building as defined within that paragraph.

19. Alternatively, the CITB argued that the Appellant's work was covered by paragraph 1 (c)(i) of Schedule 1 in that it included the "*manufacture of doors… built-in storage units.. being articles wholly or mainly made of wood".* Again, Mr Charles did not dispute that point and accepted that the manufacturing of built-in storage units was exactly what the Appellant did.

20. Yet further, the Board asserted that those engaged by the Appellant other than in manufacturing and installing, were nevertheless working in activities which were related or ancillary to its principal activities, as defined in paragraph 1 (h)(i) of Schedule 1. Again, Mr Charles accepted that Mr Byrne was right.

21. Accordingly, the Appellant effectively conceded that it was in scope under the terms of the legislation and that part of the appeal failed.

22. The second limb concerned the perceived inequity of the Appellant having been registered to the scheme when other businesses, with which it competed, had not been.

23. Mr Byrne stated that the Board could not compel registration, despite the mandatory terms of article 5. He said that companies had to make themselves known to the CITB before they could issue levies. Registration was not mandatory. The Appellant had completed an initial return on a voluntary basis and had been served with levy notices ever since. There were other businesses which competed with it which had escaped the Board's attention and Mr Charles was concerned about the inequality of that position and the harm to his competitiveness as a result.

24. The Tribunal had sympathy with his position and could see the force in his arguments. Mr Byrne stated that the point had been made to the Board by many other businesses but it had not been judicially reviewed. Nevertheless, the Tribunal did not have jurisdiction to deal with the point. The legislative ambit of appeals was narrow. This point did not concern the validity of the Notices issued against the Appellant but, rather, the fairness of the Board's *failure* to issue notices against other businesses.

25. Similarly, the third and fourth limbs of the appeal, which both concerned a failure on the part of the Board to provide training within the Appellant's sector of the industry, fell to be dealt with in the same manner. The points did not concern the scope or quantum of the Notices which had been served against the Appellant and the Tribunal had no jurisdiction to determine those points. Again, however, Mr Charles made some strong and valid points here which Mr Byrne did not dispute, namely that the Board had admitted that it did not provide training within the kitchen manufacture and installation industry, yet continues to serve levies on the Appellant and others who work within it.

26. The Tribunal considered that there may be jurisdictions in which the Appellant can rightly air those arguments, but it was not in a position to give advice in that respect. The one point of appeal that it did have jurisdiction to determine was effectively conceded by Mr Charles and was therefore dismissed.

Employment Judge Livesey
Date: 2 September 2022

Amended Judgment sent to the Parties:
31 October 2022

FOR THE TRIBUNAL OFFICE