



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8001197/2024**

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**Held in Glasgow via Cloud Video Platform (CVP) on 9 January 2025**

**Employment Judge O'Dempsey**

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**Mr L Cywinski**

**Claimant  
In Person**

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**Stone Sales Limited**

**Respondent  
Represented by:  
Ms Dowey -  
Consultant**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgement of the Employment Tribunal is that the application by the claimant for reconsideration of the tribunal's decision striking out his claim is dismissed.

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### **REASONS**

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1. I indicated to the parties that if they wished to have written reasons for the decision they could ask for them at the hearing or within 14 days of the date the judgment was sent to them. The claimant indicated that he wanted to have written reasons, and I supply them now.

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2. I was greatly assisted by the interpreter Ms Donnelly (language Polish) and would like to extend my thanks to her for the way in which she translated what the parties and I had to say.

3. On 24 October 2024 the tribunal had written to the parties stating that an employment judge had previously taken the view (communicated to the parties) that the claim had no reasonable prospect of success and making an order that the claim would be dismissed unless the claimant presented written submissions before 23 October 2024 explaining why the claim should not be dismissed.

4. The letter of 24 October stated that no written representations had been received by 23 October 2024 and therefore the claim was dismissed on 23 October 2024. That was under what was then rule 27 of the Employment Tribunal Rules of Procedure 2013.
5. On 3 November 2024, and within 14 days of that letter, that the claimant wrote to the tribunal stating that he had been an employee of Stone Source Ltd which (the predecessor of Stone Sales Ltd, the respondent) for 14 years. Stone Source Ltd was liquidated in May or April 2024. The claimant said and Stone Sales Ltd was incorporated on 19 April 2024 with similar directors staffing and assets.
6. In earlier correspondence with the tribunal and in reply to a request for information from the tribunal, the claimant had confirmed that his employment ended on 11 April 2024. The Companies House register showed that Stone Sales Ltd was incorporated on 19 April 2024 which is 8 days after the claimant's resignation without notice from Stone Source Ltd.
7. The claimant was invited to explain whether he was saying that his employment was transferred to Stone Sales Ltd and to explain the legal basis on which he relied.
8. The case was listed for a reconsideration hearing today and I have considered it under what is now rule 68 and following of the Employment Tribunal Rules 2024. Broadly speaking I have to consider whether it is in the interests of justice for there to be a reconsideration of the earlier judgement. The test requires me to consider the interests of the claimant, who is seeking reconsideration, but also the interests of the respondent and also a public interest in the requirement that there should be, where possible, finality investigation. Tied up in that idea is the question of whether there is any reasonable prospect that the original decision will be varied or revoked.
9. I have heard from the claimant today and also from the respondent's representative. I would also like to express my thanks to Ms Donnelly, the interpreter, for conveying information to all the parties in the way she has.

10. I asked the claimant what he would like to add to what he already said in writing. He pointed out matters which are, intuitively, in his favour. These were that the organisation is essentially the same company and that the only thing that has changed is the name. He said that there were the same people there (except three employees who were dismissed). Employees remain in the workshop and the owner and the director of the organisation is the same person. Even the telephone number remains the same. All that has changed, apparently, is the company logo and email. The claimant also added the reasons why he left, which were entirely understandable to me.
11. The reason he resigned was, broadly speaking, because of health and safety issues and the fact that he believed that the company was not abiding by health and safety requirements. Those were the reasons why he left and he explained, when I asked him about this, that there was no talk about what was going to happen to the company at that time.
12. I should add, however, that, even if there were some talk about the risks to the company, it is perfectly clear that his reason for leaving were these concerns with health and safety and not something to do with any prospective transfer of the undertaking. The claimant did not indicate anything that might suggest that he was arguing, or could argue that his dismissal was unfair because the reason for it was a transfer of an undertaking.
13. The difficulty that the claimant has, which he has no reasonable prospect of overcoming, is the fact that the respondent to this case did not exist at the time he resigned with immediate effect. At that point there was no transfer of an undertaking (on the what the claimant has told me of his case). The respondent did not, for the purposes of the law, exist at that time.
14. Further, because of the way in which the claimant has outlined to me the reason for his resignation he cannot argue that if there was any dismissal it was related in any way to a transfer of an undertaking.
15. So whilst I have a considerable amount of sympathy for the claimant's position that what he is seeing is essentially the same organisation continuing, in law that is not the correct position. In the eyes of the law one company is a

different legal personality to another company and it does not matter whether the personnel, or property etc of the first company becomes the personnel or property of the second company.

- 5 16. Very broadly speaking at the 1st company in law is regarded as a different person to the second company. So it is as if the claimant was employed by one person and then by completely different person. The claimant told me nothing which might suggest that the liabilities of Stone Source Limited, including any debts that might have been found to be owing after a judgment (which has not yet been obtained), were transferred to Stone Sales Limited.
- 10 17. It is for that reason that the application is dismissed.
18. I was also addressed by the respondent on whether the claim was presented outside the time limit. From what I was told of the case, it appeared to me that there was no reasonable prospect either of the claimant being able to show that his claim was presented within the time limit or that that time limit should be extended.
- 15 19. So for all of those reasons the application is dismissed however I would like to thank the claimant and Ms Dowey for the way in which they presented their respective cases today.
- 20 20. In short, it is not in the interests of justice to reconsider the decision to strike out the claimant's case; the interests of finality in litigation prevail in this case as there is no reasonable prospect of any different conclusion being reached. The inevitable conclusion was, and remains, that the claimant's case had no reasonable prospect of success.

25 **Employment Judge: O'Dempsey**

**Date of Judgment: 14 January 2025**

**Date Sent to Parties: 14 January 2025**

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