



EMPLOYMENT TRIBUNALS

Claimant
Ms M Howden

Respondent
Fuda International Trading Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL AT A PRELIMINARY HEARING

HELD AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON (sitting alone)

ON 27th September 2017

Appearances
For Claimant Mr R Owen CAB Worker
For Respondent: no attendance

JUDGMENT

The claim is dismissed on withdrawal by the claimant

REASONS

1 The claim presented on 10th May 2017 was for “redundancy payment” “notice pay” “holiday pay” and “disability discrimination”. It named as respondent “Fuda Limited/ Hobart Rose” at the address “Fuda International, Middle Engine Lane, North Shields, Tyne and Wear, NE29 8HG”. A Company named “Fuda Ltd” exists with a registered office in Hertfordshire. Another named “Fuda International Trading Ltd” had its registered office as Middle Engine Lane but it entered creditors voluntary liquidation on 16th May 2017 whereupon it changed its registered office to that of the liquidators. A Company named Hobart Rose Ltd exists with a registered office “c/o Fuda International Trading Ltd, Middle Engine Lane, North Shields, Tyne and Wear, NE29 8HG”. There were three Directors of Hobart Rose Ltd shown on a company search date 12th July, all of whom had the surname “Rose” . The search describes the company as “dormant”.

2. The claim was served on 18th May 2017 to the address at North Shields. No response having been received Employment Judge Hargrove, performed Company searches and directed re-service on Fuda Ltd at the Hertfordshire address. This happened on 20th June and caused a thorough reply to be sent to the Tribunal by a director of Fuda Ltd. I have no reason to doubt its truth which is that Fuda Ltd has no connection with any factory, let alone one in North Shields, and has never heard of the claimant.

3. Employment Judge Hargrove then caused a letter to be sent to the claimant's representative suggesting the claim be amended to show "Fuda International Trading Ltd in creditors voluntary liquidation" as the only respondent and re-service on the liquidators' office address. The claimant agreed and service was effected on 2nd August.

4. The claimant, born 20th February 1989, was employed as a Factory Operative from 13th July 2013 until he was dismissed without notice or holiday pay by a letter from the insolvency practitioners stating the company could not pay wages and would cease to trade. He has moderate to severe learning difficulties. He claims he was unfavourably treated because of something arising in consequences of his disability and/or the respondent failed to make reasonable adjustments for him over a period culminating in him going off sick in January 2017 and remaining so until his dismissal.

5. The liquidators have never filed a response on a prescribed form but replied by letter promptly on 7th August saying they did not intend to appear at any hearing but could not see how there could be any discrimination in a dismissal which affected all employees who were dismissed on cessation of trade. I agree, but that is not the claim pleaded. The claim is effectively for two separate matters. As for the act of dismissal, all the claimant asks for are the legal entitlements which apply to everyone who was dismissed ie a redundancy payment, notice and holiday pay. I would have issued a Rule 21 judgment today on liability and remedy but the claimant has already been paid the correct sums by the Insolvency Service, so withdrew those claims.

6. In the other claim for pre-dismissal detriment, two problems arise. First, the claimant would have to give evidence, at least as to injury to feelings and the liquidators would be entitled to make representations on remedy. Second, any award would rank as an unsecured debt in the liquidation and it may be the claimant would recover little or nothing. Mr Owen had advised his client of these problems, which advice I wholly endorse. The claimant understandably decided it was pointless pursuing that claim either.

Employment Judge Garnon

Date signed: 27th September 2017

Sent to the parties on 3 October 2017

G Palmer
FOR THE TRIBUNAL