



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Betteridge

**Respondent:** Hayes Specialist Recruitment Limited

**Heard at:** Leicester                      **On:** Thursday 8 June 2017

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

## Representatives

**Claimant:** Did not attend but relies upon previous written representations

**Respondent:** Ms A Meredith of Counsel

## JUDGMENT

Upon the application of the Respondent, the default judgment is reconsidered and revoked. The name of the Respondent is amended to Hays Specialist Recruitment Limited. It will now file a response in the usual way.

## REASONS

### Introduction

1. The claim (ET1) in this matter was presented to the Tribunal on 11 October 2016. It had been drafted for the Claimant by his solicitors Rich and Carr. It set out how the Claimant had worked between 7 July 2014 and 20 July 2016 as an HGV road mender. The scenario as pleaded was that he had been introduced to the then second Respondent, Leicestershire County Council (LCC), by the first Respondent named as being Hays Recruitment Plc (Hays). Pleaded was that thereafter the Claimant worked exclusively for LCC under its direction and control. As pleaded LCC unfairly dismissed him effectively for gross misconduct on 20 July 2016 by which time of course he had the necessary 2 years' qualifying service to bring his claim. He also pleaded however that in the alternative as Hays paid him, that Hays could be the employer. In the usual way the claim was served out on 12 October 2016 with a deadline for replying by way of a response by 9 November. The reader of this judgment will of course be aware that under the Tribunals 2013 Rules of Procedure, failure to provide a response by the due deadline means that the Tribunal will then issue what is colloquially known as a default judgment.

2. LCC duly provided a defence, in effect pleading that it was not the employer and that he was an agency worker supplied by Hays. It then set out the usual scenario of the tripartite relationship in these type of situations and how it would be provided with time sheets for the work undertaken by the Claimant at LCC. It would then verify that they accurately represented the work that he had undertaken. That would mean that therefore LCC would be approving payment. It would then receive an invoice from Hays, pay the bill so to speak and then Hays would be responsible for paying the Claimant subject to interalia PAYE.

3. So it was obvious to this Judge that the issue was going to be in this case as to who was the employer, as prima facie on the pleaded scenario somebody had to have employed him as he worked exclusively for these 2 years undertaking work, clearly at the control LCC as a driver. At the direction of Regional Employment Judge Swann the Claimant was asked to comment on the contents of the second Respondent's ET3. His reply was to say that the Claimant has to have been employed by one or other of the named Respondents.

4. Against that background LCC was asking for a Preliminary Hearing, basically on the employee or not point and really maintaining applying the authority of **James v Greenwich** that there was really no case to answer against it because it would not be necessary to construe a contract of employment against it. If anybody was the employer, it would have to be Hays.

5. That then led me to become involved in this case because in terms of the file it was put before me circa 7 December because Hays having not filed a response I was invited by the clerks to issue a default judgment. This I duly did. At the same time however I had a letter written to the Claimant's solicitors inviting them to consider given the **James v Greenwich**<sup>1</sup> line of authority as to whether or not they wanted to proceed against LCC. I did however flag up that if Hays was to come back in, then of course there would need to be a hearing to determine who was of the two of them, if anybody, the employer. As it is on 4 January the Claimant via his solicitors, of course having got his default judgment against Hays with the remedy payable set out therein, informed the Tribunal that he would withdraw against LCC and seek to enforce the judgment against Hays.

6. What then happened is that the dismissal judgment was made the subject of an application for reconsideration by Hays legal department in London on 7 February. The Claimant opposes the same and relies upon the various e-mails that have been sent in but has decided not to attend today to deal with the reconsideration issue but rely upon the same. Ms Meredith has attended and I am most grateful for her written submissions and further oral argument before me.

7. The following are my **findings of fact**:-

7.1 It is self evident from the documentation before me that the Claimant was never employed by Hays Recruitment Plc. Indeed there is no such legal entity. The overarching holding company for this well known international recruitment business is Hays Plc. Not surprisingly within the Hays empire there are then subsidiary companies.

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<sup>1</sup> (2007) ICR 577.

7.2 The crucial thing is that from the documents that are before me, the claimant was engaged on an agency worker. This is clear from the documentation starting with the candidate application form BP<sup>2</sup> 53-4; thence with the reference element of the application and his signature at BP 56; finally the formal assignment on a temporary assignment contract by Hays to LCC where again it is specifically stated that the supplier of the Claimant is Hays Specialist Recruitment Limited. For completeness this can be seen in the terms of assignment document made between Hays and Mr Betteridge which is specifically headed in terms of the agency as a party to the contract as being Hays Specialist Recruitment Limited.

7.3 So it means that the claim was issued against a legal entity which doesn't exist and not against the true employer, if that be the case, which is Hays Specialist Recruitment Limited.

8. The address that Rich and Carr gave on the ET1 in terms of service upon Hays was its local office in Leicester at 2 Colton Square, Leicester, LE11QH. The person who then would have been responsible for the interface of Mr Betteridge to LCC, Dawn Holt, had by the time of the default judgment left Hays. When the default judgment arrived on the doormat of that local office it was immediately sent by Mr Moul, Senior Manager through to HQ and specifically the legal department. It is based at 250 Euston Road, London NW1 2AF which is also the registered office of Hays Recruitment Services Limited. The relevant lawyer at the legal department then made the application to which I have referred asking for reconsideration of the judgment on the basis that the ET1 had never been received by Hays and in any event it had been against a non-existent legal entity.

9. In terms of the stance of the Claimant's solicitors to the application, encapsulated in reliance upon some documents which were submitted to the Tribunal on 2 March, BP 37 onward. But they don't assist me at all on the point. The first of these documents is in fact the information required to comply with the Agency Worker Regulations 2010 which in fact was confirmed as being accurate by Ms Annis for LCC. The heading says Hays Recruiting Experts Worldwide, which is obviously a trading style. The next document is the Hays branch office locator, from Google I assume, showing the office in Colton Square, Leicester to which I have already referred. The top heading is the same as on the first document that I have referred to. The third document that he provided is an ACAS certificate but it refers in terms of the Respondent to Hays Recruitment Plc which I have already pointed out doesn't exist. That there may have been dialogue during the ACAS period between the Claimant's side and Hays doesn't assist me in the sense that the ACAS e-mail does not refer to who it was on the Hays side who was being talked to. But the fact that Hays was asking for further information indicates to me that the dialogue was more likely to be with the legal department in London. Hence why they wanted more information out of Rich and Carr who were then acting of course for the Claimant in order that they could then make enquiry and as Ms Meredith puts it set up a file, which is their usual approach to these matters because Hays being such a large company gets a great many interventions via ACAS, many of which don't actually materialise in any Tribunal proceeding. All matters of this nature are dealt with by the legal department. Rich and Carr never provided the information required. The final point to make is that Rich and Carr knew about the importance of communicating with the legal department at Hays HQ as is self-evident from the correspondence that Mr Anastasiades of Rich and Carr was involved in with Nicola Adams of the

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<sup>2</sup> BP = bundle page in the bundle before me.

legal team on the fourth floor at 250 Euston Road in another case in January 2016 onwards, which I understand also involved LCC as well as Hays and which was settled by the former . Ms Meredith makes the point that Mr Anastasiades would have known as is clear from BP 46 in relation to that claim, that first the point of contact within Hays and thus implicitly for service of a claim was the legal department at Hay's HQ in London, and second that the stance of Hays is almost invariably that it does not accept in these scenarios that it is an employer and ie there is the reference at BP 46 in relation to that litigation to "your client was a self employed temporary worker, working under the supervision, direction and control of the first Respondent (ie Leicestershire County Council)."

10. So what I have here in summary is the following:-

(a) A firm of lawyers acting for the Claimant who knows the port of call to go to in terms of attempts to negotiate with such a large organisation.

(b) Who should from a cursory inspection of the documentation that doubtless would have been provided via the Claimant have realised that the true identity of the employer was Hays Specialist Recruitment Limited, but who nevertheless chose to issue the proceedings on a branch office with the wrong name for the actual business.

(c) The net result of course is that at present the Claimant has a default judgment which isn't worth the paper it's written on as he can't enforce it as the Respondent as now named doesn't exist in law.

### **Application of the 2013 Rules and my decision**

11. Engaged is Rule 70:

"A Tribunal may either on its own initiative, or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration (the original decision) may be confirmed, varied or revoked. If it is revoked it may be taken again."

12. The interests of justice in this case self evidently mean that I should reconsider my judgment which I now do and overturn it. In summary this is because of the errors that I have now referred to and the fact that on the face of it there is a viable defence; encapsulated it would be that on the tripartite arrangement that was existing here there is no necessity to construe an employment contract against Hays when on the face of it, it would have been clear to the Claimant that if anybody was his employer it was the end user. In the alternative the terms of the engagement with Hays means that it was not his employer.

13. Accordingly I revoke the default judgment.

14. **I amend the name of the Respondent to Hays Specialist Recruitment Limited** and direct that it serve a response within 28 days of the issue of this judgment. **For the avoidance of doubt the ET1 is to be served upon the Respondent care of its legal department at Hays Recruitment Services Limited, 250 Euston Road, London NW1 2AF.**

15. When so doing a new notice of hearing will also be issued. I anticipate:

that that once the response is received that hearing will become a Preliminary Hearing for the purposes of determining the issue of whether or not the Claimant was an employee of the now Respondent.

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Employment Judge P Britton

Date: 9 June 217

JUDGMENT SENT TO THE PARTIES ON

.....13 July 2017.....

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FOR THE TRIBUNAL OFFICE