



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4118200/2018 and 4118199/2018

Held in Glasgow on 28 February 2019

Employment Judge: David Hoey (sitting alone)

Mr A Currie

**First Claimant
Represented by:
Mr P Currie -
Lay Representative**

Ms L McCulloch

**Second Claimant
Represented by:
- as above**

Raphael Pacitti

**First Respondent
Represented by:
Mr M Stephen -
Solicitor**

G E P Enterprises Ltd

**Second Respondent
Not present and
Not represented**

G G L Catering Ltd

**Third Respondent
Represented by:
Ms K Paton -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claims as against the first respondent and second respondent are dismissed upon their withdrawal by the claimants
2. The claims as against the third respondent are remitted to a one day final Hearing to be fixed in June 2019.

REASONS

1. On 2 September 2018 the Tribunal accepted a Claim Form from both claimants. They arise from the same facts and are being considered together. The claims seek notice pay and a redundancy payment. The case called today for a preliminary hearing as to the identity of the claimants' employer (ie the party who is liable for the remedy claimed by the claimants).
2. Mr Currie represented both claimants. Mr Stephen represented the first respondent. Ms Paton represented the third respondent. A bundle of productions had been produced by the respondents.
3. Mr Currie explained that the claimants were no longer seeking any remedy against the second respondent (which had in any event been struck off the register of companies).

Issues arising

4. The issue for the Hearing was in sharp focus. Who employed the claimants as at the date of the claimants' dismissal?

Discussion as to the current employer

5. I began by explaining to the parties the overriding objective in terms of Rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, namely of the need to ensure the matters are dealt with fairly and justly with due regard to save expense and time and act proportionately to the issues in dispute.
6. In that regard I asked Mr Currie to set out whom the claimants believed to be their employer at the relevant time when the claimants' employment ended. His position was that both claimants understood they were employed by the first respondent as he had paid them their wages. Nothing had been provided during their employment to change their knowledge in that regard. His position was that the claimants' employer had remained constant during their employment.
7. Mr Stephen set out what the first respondent's position was. The first respondent maintains that he was never the claimants' employer as the claimants were originally employed by a partnership (of which the claimant was a partner). From 1 February 2014 the partnership (the claimants' then employer)

transferred the business to the second respondent. From June 2018 the third respondent became the claimants' employer. That was accepted by the third respondent. Ms Paton confirmed this was correct.

8. The first respondent was also an employee of the third respondent.
9. Ms Paton noted that there was a short break (of a few days) before the third respondent took control of the business which employed the claimants.
10. Mr Currie stated that the claimants had not been told any of this during their employment and it was only following their dismissal and following the claimants' research and the communications that have since been produced that the claimants understood their employer may have changed.
11. Mr Currie stated that nothing had ever been issued in writing during the claimants' employment, whether by way of written statement or information as to any changes in employer or otherwise.
12. In the course of the discussion Mr Currie indicated that the claimants were prepared to accept that there was evidence that their employers did change (albeit this was not disclosed during their employment).
13. Mr Currie then explained that upon the claimants' last day of employment they were issued with a number of printed payslips (the first they had received) and a written statement. This information appeared to show that the third respondent was the claimants' employer as at the date of their dismissal (if the information contained within it was accurate).
14. Mr Currie then produced a bundle of papers, some of which seemed to duplicate those provided by the respondents. This contained the information to which he had referred.
15. I gave the parties a short adjournment to consider the papers that had been produced and to allow Mr Currie to take instructions as to his position, given the information that had been provided and the discussion that had taken place, including the position that the respondents were adopting which had been

carefully set out orally (and with reference to some of the productions that were lodged).

16. Following the adjournment Mr Currie explained that he had taken instructions and considered the matter in detail in light of the productions and discussion. Both claimants were able to advise the Tribunal that they were prepared to accept that the third respondent was in fact (and as a matter of law) the claimants' employer as at the relevant date. Mr Currie explained that this decision was arrived at following careful consideration of all the circumstances.
17. Mr Currie also advised the Tribunal that he was formally withdrawing the claims as against the first and second respondent. I explained to him the consequences of doing so, particularly in light of Rule 52 and the option of seeking no dismissal judgment (and the consequences of a dismissal judgment, namely the inability to raise a claim from the same facts in a different forum).
18. Following consideration of the issues, Mr Currie sought a dismissal judgment in respect of both the first and second respondents, following their withdrawal.
19. Mr Stephen advised that there would be no further application or motion from the first respondent whether by way of expenses or otherwise.

Next steps

20. I then moved on to consider how best to progress the case to a conclusion given the issue as to the claimants' employer had been agreed. Both the claimant and third respondent asked that the matter be remitted to a full hearing to deal with the outstanding issues.
21. It was agreed that the outstanding issues were:
 - a. Is the claimants' employment with the third respondent continuous from the commencement of their employment?
 - b. If not, when did the claimants commence their employment with the third respondent?
 - c. Are the claimants entitled to a redundancy payment and notice pay from the third respondent and if so at what amount?

22. I noted that the first question is not straightforward since there appeared to be the potential for a number of transfers between different legal entities during the claimants' employment. This had been noted by My Stephen and papers had been lodged that showed potential transfers of various undertakings during the period of the claimants' employment.
23. The answer to the first question would require an analysis as to what happened for the duration of the claimant's employment, and whether under the Transfer of Undertakings (Protection of Employment) Regulations 2006, the claimants' employment transferred by operation of law.
24. Both the claimants' and third respondents' agent undertook to work together to consider this issue and see whether consensus emerged and if not, to ensure that they identified the appropriate documentation and witnesses to ensure the matter could be fully and properly dealt with at the hearing.
25. Ms Paton would work with Mr Currie to seek to establish whether agreement can be reached as to continuous employment, and if not, ensure the issues in dispute were clearly identified and the evidence needed to resolve these issues was put before the Tribunal.
26. The parties would liase and identify days in June 2019 that suited both parties (and their relevant witnesses) and write to the Tribunal with these dates to allow a hearing to be fixed. The parties agreed that one day would be sufficient as they would work together with a view to seeking to agree as much evidence as possible and identify relevant productions and witnesses
27. Mr Currie undertook to prepare a joint bundle of productions within 14 days prior to the date a hearing was fixed and Ms Paton would ensure her productions were included.
28. It was agreed that no orders were necessary given the foregoing agreement and desire of the parties to work together to focus the issues, prepare the relevant information and ensure the matter was progressed in accordance with the overriding objective.

Employment Judge

David Hoey

Date of Judgment

08 March 2019

**Entered in register
and copied to parties**

11 March 2019