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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106687/2020 (V)

Held 19 November 2021 by Video Conference

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Employment Judge: R Gall

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Mr Dev Singh Negi

**Claimant
Representing himself**

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Basrai Restaurant Ltd

**Respondent
Represented by:
Mr S Bradford -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

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(1) Time is extended in terms of Rule 20 of the Employment Tribunals (Rules of Constitution & Procedure) Regulations 2013 such that Form ET3 submitted by the respondents on 17 November 2021 is accepted. The claim is defended.

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(2) Express Buffet Limited Company Number SC621175, having its registered office at 3-7 Beresford Terrace Ayr KA7 2ER is added as a respondent as it appears there are issues between that entity and the claimant in that they were his employer and may therefore be liable for any sum awarded. It is in the interests of justice to add them as a respondent. This is in terms of Rule 34.

- (3) Basrai Restaurant Limited is removed from the proceedings as it is accepted that this entity was not the employer of the claimant and therefore cannot be liable for any sum claimed by way of wages for work carried out. The decision is taken in terms of Rule 34.

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REASONS

1. This is a claim which has been current for some time. It was initially raised against Mr Basrai World Cuisine Ayr. It was accepted by the claimant in April 2021 that the claim was properly directed against a limited company. That company was said to be Basrai Restaurant Ltd. The claim was then served upon that entity.
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2. No Form ET3 was submitted by Basrai Restaurant Ltd or by the original respondents. The question arose as to a possible Judgment in terms of Rule 21. A hearing was scheduled in order that the claimant could provide information as to the sum claimed. That hearing was scheduled for 19 November 2021.
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3. The respondents made contact with the Tribunal in the lead up to that hearing. They sought to advance a defence, doing that through email. It was explained to them that no Form ET3 had been received. The restrictions on involvement in proceedings were explained to them, with the possibility of an application in terms of Rule 20 being mentioned.
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4. On 17 November solicitors for the respondents submitted Form ET3 with an application that time be extended to enable it to be accepted. Such an application requires to be considered by a Legal Officer or by an Employment Judge. The claimant in that scenario is to be given the opportunity to comment on the application. Unfortunately due to administrative error these elements did not occur. A clerk intimated that Form ET3 was accepted. That position was not competent.
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5. The main element in the defence was the assertion that the respondents were not the employer of the claimant and that Express Buffet Ltd was the

employer. The respondents were said to have been landlords of the property from within which Express Buffet Ltd traded.

6. An interpreter was present on line at the video conference hearing on 19 November 2021, an interpreter having also been present at early diets. There were some technical difficulties, however I was satisfied that the claimant understood what happened and had the opportunity to contribute by answering questions and commenting on proposed courses of action.
7. At the outset of this hearing on 19 November the difficulties with “acceptance” of Form ET3 were explained. Mr Bradford for the respondents accepted that he required to explain why the response was only now being submitted. He did not rely on confirmation of acceptance issued by the Tribunal given the circumstances mentioned above.
8. I heard from Mr Bradford. He explained the landlord tenant relationship between the respondents and Express Buffet Limited. He said that until very recently the respondents were unaware of the claim. They had not been the claimant’s employer at any point, however. They had taken steps to defend the claim within a reasonably short period.
9. Mr Negi had no comment to make on the position of the respondents. Importantly, he accepted that Express Buffet Limited had been his employer. He had dealt with Gurdeep Singh and a gentleman I understood to be named Jagjit Singh.
10. I considered the reasons for lateness of Form ET3. I considered the defence proposed. I also considered the prejudice to each party if the defence was permitted to be advanced or if that was precluded. I was satisfied that there were reasons for the lateness of Form ET3. There appeared to be merit in the defence. If the claim was not defended prejudice would be caused to the respondents who would potentially be liable for sums for which they had, it was accepted by the claimant, no liability. The claimant would also be left in the situation of having a judgment against a party who he accepted had not been his employer. I therefore extended time and permitted Form ET3 to be received and accepted.

11. The position of Express Buffet Ltd was then explored. Mr Negi accepted that this entity had been his employer. It therefore seemed to me that it had to be appropriate to add them as respondents. I explained that this would involve an element of delay as they were added and the case then served upon them given them a chance to defend the claim. The end result would however be that the claim was directed against the right party.
12. Mr Negi accepted this was the appropriate course to take. He confirmed that he regarded Gurdeep and Jagjit Singh as the owners of the company which had employed him. They were not his employers in any individual capacity.
13. Express Buffet Limited was therefore added as a respondent. The claim will therefore be served on Express Buffet Ltd at their registered office and trading address, 3-7 Beresford Terrace Ayr, KA7 2ER. Mr Bedford said that there was no trading going on in the premises at present. He was aware of the solicitor who acted for that company, being Mr Brian Dunlop of Black Hay, Solicitors, 45 Main Street Prestwick. The clerk is asked to serve the claim upon Express Buffet Ltd at the Beresford Terrace address and to send a copy to Mr Dunlop both postally and by email at his address, brian.dunlop@blackhay.co.uk.
14. Given acceptance by Mr Negi that Basrai Restaurants Ltd had not been his employers it seemed to me it followed that they should be removed from the claim. I explained to Mr Negi that this would mean that the claim against them came to an end. He confirmed he understood and accepted that. They are therefore removed from the claim.
15. Given the history to this claim an early hearing date is requested in the event that it proves necessary for that to take place.
16. No-one in the hearing wished to say anything further and the hearing closed at that point.

Employment Judge: Robert Gall
Date of Judgment: 22 November 2021
Entered in register: 23 November 2021
and copied to parties