



EMPLOYMENT TRIBUNALS

Claimants: (1) Ms S Day
(2) Ms H Newman

Respondents: (1) Mr J Eade
(2) Auworld Ltd

Heard at: East London Hearing Centre

On: Thursday 3 September 2020

Before: Employment Judge Burgher

Representation

Claimant	In person
First Respondent	No attendance or representation
Second Respondent	Written statement

JUDGMENT

Ms Day case number 3200757/2020

1. Mr Eade is dismissed as a party to proceedings. He was not the employer of the Ms Day. However, pursuant to rule 34 of the Employment Tribunal rules it is considered to be in the interests of justice for the Second Respondent to be added to Ms Day's claim. Her ET1 will be therefore be served on the Second Respondent.

Ms Newman case number 3200774/2020

2. The Second Respondent has failed pay the Ms Newman for wages due to to her for work on 22 and 29 February 2020. The Claimant's claims for unpaid wages therefore succeed.
3. The Second Respondent has failed to provide Ms Newman with a statement of written particulars. An award of 4 weeks pay is made in this regard pursuant to section 38 of the Employment Act 2002.

4. **The Second Respondent is ordered to pay Ms Newman the total sum of £300.00 respect of her claim. This consists of:**

4.1 Unpaid wages	£100.00
4.2 Section 38 Employment Act 2002 (4 weeks pay)	£200.00

REASONS

Issues

1. Ms Day presented her claim against Mr Eade for unpaid salary and unpaid notice pay in the sum of £2845.00 on 16 March 2020. Ms Day asserted that Mr Eade was her employer and that he was personally liable for the sums due. No claim was made against Auworld Ltd. Mr Eade did not present an ET3 response to Ms Day's claim.
2. Ms Newman presented her claim against Auworld Ltd for £100 for work done on two separate Saturdays in February 2020. She presented her claim to the Tribunal claim on 18 March 2020. Mr Eade responded to this claim, on behalf of Auworld Ltd, on 11 May 2020. This is notable given that Mr Eade has consistently maintained in correspondence that he resigned as a director of Auworld Ltd on 3 March 2020 and that he has had no involvement with the Second Respondent since that date. The response asserts that Ms Newman had no contract, that she was self employed but that Mr Eade was happy to pay £100 in compensation even though the liability should be against the company.
3. Employment Judge Russell had identified the matters at issue as being:
 - 3.1 who is the correct respondent in each case;
 - 3.2 what sums are the parties contractually entitled to;
 - 3.3 whether the sums have been paid.

Preliminary matters

4. Mr Eade had previously applied for a postponement of the hearing to accommodate his disability. This application was considered and rejected by Employment Judge Russell on 27 August 2020. The Claimant appealed this order and on 2 September 2020 His Honour Judge Auerbach concluded under rule 3(7) of the Employment Appeal Tribunal rules that the Claimant's appeal disclosed no reasonable grounds to bring in the appeal. However, the EAT expressly stated that that Mr Eade could renew his application for a postponement by providing further information about the position of obtaining medical evidence, the impact his autism would have in terms of the type of information that it would assist in to have in advance of the hearing to reduce his anxiety and enable him to prepare and any further issues he wished to raise.
5. By email dated 2 September 2020 at 22:42 Mr Eade sent the following email to the Employment Tribunal in respect of the progress of the hearing.

To the attention of the sitting Judge

As you are aware, for medical reasons, I feel unable to participate tomorrow. I also spoke to the Employment Tribunal helpline who believe it to be against my wellbeing. I do however wish to be involved. I would like to be kept up to date with what going on, and respond in writing. I believe this is appropriate on account of being autistic. I do not wish my medical details including g the name of my health condition to be shared with other parties as that can fuel anxiety attacks on an extreme level.

I do not believe it fair to conclude in my absence just because I have a health condition which makes participation in these kind of difficult social settings impossible.

I feel I will need my own break system in place to keep my autistic related anxiety under control.

I would also appreciate being referred to as Respondent 2.

Earlier on today, I sent a statement to which I would like read out on my behalf.

I wish I could attend which would have been made possible if reasonable adjustments were put in place from day 1 where I made the requests.

If you could let me know urgently how you intend to allow my involvement without direct interaction with people needed, that would be great.

I should be allowed to put my point accros but my autism is maki g it impossible for me to feel I can do that, and as you now know, the Employment Tribunal Helpline agrees completely and have advised exactly this happen.

6. Mr Eade did not apply for a postponement or provide medical evidence.
7. The hearing took place by Cloud Video Platform. I considered the content of the Claimant's email including the statement referred to within it. I had regard to the overriding objective in dealing with the matter fairly and justly having regard to the issues of the case and the principle of open justice.
8. I had regard to the fact that Mr Eade was not holding himself out as the representative of the Second Respondent and that he had not in fact presented an ET3 in respect of Ms Day's claim. In these circumstances, pursuant to rule 21 of the Employment Tribunal rules, Mr Eade was only entitled to participate in the hearing the extent permitted by the Judge.
9. Mr Eade had drafted a witness statement on 2 September 2020 and emailed it to the Tribunal and both Claimants on 17.53 on that date. Mr Eade requested that the statement be read out on his behalf to the ears of all present. However, all parties had a copy of the email and confirm that they had read it and it was not read out. The email does not contest the basis for the claim however it explicitly states "*I do not agree that I am legally the Respondent. The company is registered in its own legal right as an entity.*"
10. Given Mr Eade's email sent at 22:42 requesting reasonable adjustments and his statement sent to the parties and the Tribunal at 17:53, I concluded that I would permit Mr Eade to participate in the hearing pursuant to rule 21 by reference to his statement sent at 17:53. As far as Mr Eade is concerned the issue was whether he was the employer of Ms Day. In these

circumstances, I did not consider it appropriate to postpone the hearing or take steps to implement Mr Day's requests for reasonable adjustments. His involvement was limited by virtue of rule 21 of the Employment Tribunal rules and a number of his requests would have ran contrary to the important principle of open justice.

11. In any event, Mr Eade attended the CVP hearing. He was invited to speak and turn on his video on but did not to do either. Therefore no discussion took place about how his needs could be accommodated on CVP. There was also chat facility in CVP that could have been utilised by Mr Eade to make comments but he only observed some the proceedings before logging off during the hearing.
12. As such the matter proceeded in Mr Eade's absence but with explicit reference to his statement 17.53 statement.

Evidence

13. I concluded that it was appropriate to deal with the preliminary matter first as to who was the correct employer. Ms Day and Mr Newman gave evidence. Both had prepared written witness statements gave evidence under oath by way of affirmation. I asked questions relevant to the issues and cross referred Mr Eades 17;53 witness statement.
14. As referred to relevant documents in a bundle and during her evidence Mr Day shared a copy of her contract of employment which states that she was employed by AU Productions, which is a trading name of Auworld Limited company number 12128775.

Facts

15. I have found the following facts from the evidence.
16. Ms Day was interviewed by Mr Eade in November 2019 with a view to her working as a Classes Manager for the Second Respondent. Ms Day responded to a job advertisement to work for AU Productions and was provided with a contract of employment naming them as her employer. Mistake commenced employment on 1 January 2020 and her employment ended on 13 March 2020.
17. Ms Day undertook some research into the Second Respondent on the Companies House register as it seemed that only Mr Eade was involved. Ms Day asserted that the Second Respondent was not a genuine company and was simply a front put forward by Mr Eade to avoid paying his debts. Ms Day makes the point that Mr Eade paid her salary for January 2020 out of his own personal bank account, and deducted tax and national insurance. No payslips were provided despite being requested. Her enquiry as undertaken following her termination of employment increase her concerns she tried to contact the director Sean Clarkson, to no avail and there is no representative of the company in attendance today. She expressed concerns that Mr Clarkson if he is a real person could be a vulnerable person been manipulated by Mr Eade.
18. Ms Day was involved in interviewing Mr Newman for the role of Classes Assistant on 25 January 2020. Ms Newman had no doubt that she was being employed by the Second Respondent and the interview undertaken by Ms Day was for and behalf of the Second Respondent. Mr Newman asserts that she only had involvement with Mr Eade and following

end of her employment and she was told by Mr Eade to contact Mr Clarkson but there has been no response from Mr Clarkson.

Conclusion

19. Mr Eade's statement states that "*the company is registered in its own legal right as an entity*". This is a correct proposition of law. Whilst from what I have heard I fully accept the suspicions that Ms Day has about Mr Eade, the Second Respondent is properly registered at Companies House and is a separate entity and it was her employer. As Mr Eade was not her employer he is not personally liable for any alleged payments due to her. Therefore, Mr Eade is dismissed as a party to proceedings.
20. The correct employer for both Claimants is the Second Respondent.
21. Ms Day has not brought a claim against the Second Respondent. However, pursuant to rule 34 of the Employment Tribunal rules I consider that it is in the interests of justice for the Second Respondent to be added to Ms Day's claim. Her ET1 will be therefore be served on the Second Respondent. If no ET3 is submitted a default judgement in the sum of £2845 is likely to follow.

Ms Newman claim 3200774/2020

22. I considered Mr Newman's statement and accept its contents.
23. The Second Respondent has failed pay the Ms Newman for wages due to to her for work on 22 and 29 February 2020. The Claimant's claims for unpaid wages therefore succeed.
24. The Second Respondent has failed to provide Ms Newman with a statement of written particulars. A award of 4 weeks pay is made in this regard pursuant to section 38 of the Employment Act 2002.
25. The Second Respondent is therefore ordered to pay Ms Newman the total sum of £300.00 respect of her claim. This consists of:

Unpaid wages	£100.00
Section 38 Employment Act 2002 (4 weeks pay)	£200.00

Employment Judge Burgher
Date: 3 September 2020