



EMPLOYMENT TRIBUNALS

Claimant: Mr NJ French
Respondents: (1) Aquilla Facilities Limited (in administration)
(2) Aquilla Industrial Cleaning Limited

AT A PRELIMINARY HEARING

Heard at: Leeds by CVP video conferencing **On:** 30th August 2023
Before: Employment Judge Lancaster

Representation

Claimant: In person
Respondents: (1) Did not attend
(2) Ms Evans-Jarvis , Peninsula Business Services Limited

JUDGMENT

1. The claim against the Second Respondent is dismissed on withdrawal.
2. The claim against the First Respondent remains stayed pending any application to the administrators or to the court for consent to proceed.

REASONS

1. The claim was originally presented on 25th November 2022, naming three Respondents: Mr AS Carnell, Aquilla Industrial Cleaning Specialists Ltd and Aquilla Facilities Ltd.
2. That claim was rejected as against the first two named Respondents because, as against them, the Claimant had not complied with the requirement to obtain an ACAS early conciliation certificate. The notification of that rejection was sent to the Claimant on 22nd December 2022 and that default has never been rectified.
3. The claim against the remaining Respondent (Aquilla Facilities Ltd) was served on that same date, 22nd December 2022, without the rejection letter and it still on the face of it named all three Respondents.
4. A response was presented on 19th January 2023 by Peninsula purportedly on behalf of the First and Third Respondents only, whilst also asserting that the Second Respondent did not exist and was not an associated company and so should be removed from the proceedings.

Case: 1806642/2022

5. On 6th February 2023 the Tribunal wrote to the parties inaccurately stating that the response on behalf of the First and Third Respondents had both been accepted, whilst at the same time forwarding to Peninsula a copy of the rejection letter from 22nd December 2022.
6. Unfortunately on that letter of 6th February 2023 and on all subsequent correspondence from the Tribunal all three originally named Respondents still appeared as if they were parties.
7. When the case came before Employment Judge Deeley at a preliminary hearing on 1st March 2023 she made orders, said to be by consent, removing the First Respondent, Mr Carnell, from the proceedings and amending the title of the Second Respondent to Aquila Industrial Cleaning Limited. Neither of these were however in fact parties to the proceedings at that time, and nor had they ever been. Any application to add a party at this stage would, of course, on the face of it have been significantly out of time, but that issue was not addressed.
8. Subsequently Peninsula described have themselves in correspondence – and have, of course, attended today - as acting for the Second Respondent (ie Aquila Industrial Cleaning Ltd) but the claim has never been formally served on that company and no orders have ever been made as to the service of any Response (ET3) on its behalf.
9. Aquila Facilities Ltd (now identified as “The First Respondent” in Judge Deeley’s Order) went into administration on 14th March 2023, Peninsula came off record as acting for the First Respondent on 24th March 2023, and the claims against it were accordingly stayed for six months from 6th April 2023 pending any obtaining of the requisite consent to continue proceedings.
10. In a response to Judge Deeley’s requiring of updated information on the trading position of the First Respondent and for confirmation as to whether there had been any proposed or actual transfer of undertaking from it to the Second Respondent in Autumn 2023, the reply on 8th March, whilst correctly stating that Aquila Facilities Ltd. was still shown as an active company as at that date (and indeed was still at the date of further correspondence on this subject on 13th March 2023) is so partial as to be misleading, but has no practical effect on these proceedings. Had it been properly identified that the company was about to be put in administration the next day, 14th March 2023, following initial approaches by Mr Carnell to the insolvency practitioner in December 2022 or January 2023, it would not then have affected the further listing of this case.
11. That potentially misleading correspondence is not and cannot be a basis for striking out the response of the First Respondent, against whom proceedings are necessarily now stayed. Nor is there any conclusive evidence that there was any actual transfer to the Second Respondent as early as Autumn 2022 prior, potentially, to the sale of assets following the administration in March 2023. The Second Respondent even if it were properly a party, has not yet submitted any response which might be subject of a strike out, and the correspondence of March 2023 is not so obviously improper as to deny it the opportunity, if applicable, of presenting an arguable factual defence. The Claimant’s own pleaded case is that he was dismissed on 14th October 2022, before any purported transfer, and a full five months before the actual entering into administration. Even taking not account any complication of that position by reason of

Case: 1806642/2022

the continuing issue of payslips in a zero sum, he could only succeed in a claim against the Second Respondent if he were given leave to amend his claim to plead an automatically unfair dismissal, at a time when still actually assigned to the relevant group of workers, for a reason connected with a TUPE transfer which therefore deemed him still to be in employment immediately before the actual transfer. On this apparent chronology that is an argument which would be both legally and factually difficult for the Claimant.

12. The preliminary hearing on 24th April 2023 which was listed to consider the Claimant's strike out applications and also the final hearing listed for 9th and 10th May 2023 both had to be postponed upon the imposition of the stay on 6th April 2023.
13. This preliminary hearing was then listed, as and if appropriate, to address issues in the previous orders, for general case management and to relist a final hearing .
14. Following an exploration of the history recorded above, where I am grateful for the cooperative approach and understanding of both parties, I had concluded that I ought to remove the Second Respondent under rule 34 of the Employment Tribunals Rules of Procedure 2013 as having been wrongly included by reason of a purported amendment to the name of a Respondent who was not in fact properly then a party to the proceedings.
15. However, the Claimant having indicated that in the circumstances he would not seek to pursue this claim – or to present any new claim – against Aquila Industrial Cleaning Specialists Ltd. it is most convenient to dispose of this part of the case by way of a dismissal on withdrawal (the Second Respondent is currently still shown as a party following Judge Deeley's hearing, but will not be from now on).

EMPLOYMENT JU DGE LANCASTER

DATE 30th August 2023