EMPLOYMENT TRIBUNALS

Claimants: Mr P Maphosa
Mr C Maphosa

Respondent: Yeshivas Lubavitch Manchester

HELD AT: Manchester **ON:** 20 September 2017

BEFORE: Employment Judge Sharkett

REPRESENTATION:

Claimants: Mr P Maphosa (for both claimants)
Respondent: Ms S O'Brien, Solicitor

JUDGMENT ON PRELIMINARY HEARING

1. This is a preliminary hearing to determine whether the claims brought by both claimants have been submitted within time, and whether the name of the respondent should be changed from Rabbi Sholom Weiss to Yeshivas Manchester.

2. In preparation for the hearing the respondent has produced a bundle of documents consisting of some 37 pages. The two claimants have submitted a joint ET1, bringing claims of unfair dismissal and unlawful deduction of wages.

3. The claims of the second claimant, Mr C Maphosa, do not appear to be particularised within the ET1. However, it is clear that it was the intention of both parties to name Mr C Maphosa as an additional claimant in these proceedings.

4. I first explained to both claimants the purpose of the preliminary hearing today, and then established the claims each claimant is intending to bring before the Employment Tribunal.

5. In respect of Mr P Maphosa, he is bringing claims of unfair dismissal and unlawful deduction of wages.

6. Mr C Maphosa is bringing claims of unlawful deduction of wages only.

7. In reaching my Decision on the out of time jurisdictional issue I have regard to the finding of the Supreme Court that the requirement to pay a fee when bringing a

claim in the Employment Tribunal was found by that Court to be unlawful in July 2017.

8. I turn first to the claim of Mr C Maphosa who is the second claimant.

9. Mr C Maphosa has given oral evidence that his employment with the respondent terminated on 11 January 2016. His claim for unlawful deduction of wages was not issued until 11 April 2017 which was over a year outside the time limit for bringing the claim.

10. In addition Mr Maphosa did not comply with the provisions of Early Conciliation with Acas before bringing his claim.

11. I have not been told of any reason why Mr Maphosa did not contact Acas before issuing his claim or why his claim was not issued within the time limit prescribed by Statute. I have not been told of any reason why it was not reasonably practicable to bring his claim within the prescribed time limit under. It would appear that the 2nd Claimant was only prompted to being a claim when the employment of his father, the 1st Claimant came to an end.

12. I find therefore that the 2nd Claimant's claim for unlawful deduction of wages was not brought within the prescribed time limit and the Tribunal does not have jurisdiction to hear his claim. .

13. Turning now to the claims of Mr P Maphosa the 1st claimant. The 1st claimant brings claims of unlawful deduction of wages and unfair dismissal. Both claims before me today are on the face it have been submitted outside the prescribed time limit. However, on further consideration of all the evidence before me, I find that these claims were originally submitted, having complied with the obligations of early conciliation, on 13 March 2017, which was within the time limit of 3 months prescribed by Statute. Those claims were rejected because they were not accompanied by the required fee or alternatively the necessary documentation that was required for fee remission. But for that omission on the part of the 1st claimant that claim would have been accepted and would have been in time.

14. That is not the ET1 that is before me today but it is clear following the Unison decision of the Supreme Court in July 2013, the ET1 of 13 March 2017 was unlawfully rejected. Following the Unison decision the government have indicated that all claims that were rejected for non-payment of a fee will be administratively re-instated. The effect of this intention is that the 1st claimant's claims contained within the ET1 of 13 March 2017 will re-instated and then heard by the employment tribunal.

15. However, that is not the claim that is before me today; the claim that is before me today is the one that was issued on 11 April 2017. That claim was clearly out of time. The correct time limit for bringing that claim was 20 March 2017 because there was a period of pause during which early conciliation was attempted. The question is whether was it reasonably practicable for the first claimant to bring the claim within the prescribed time limit under section 111 Employment Rights Act for unfair dismissal, and a similar provision for bringing a claim under the unlawful deduction of wages provisions.

16. It is clear from the evidence I have heard that the claimant was in receipt of legal advice from before his employment terminated, although it is not clear whether there was continuity of advice received as the 1st claimant was extremely confused about any detail relating to this period of time. Under normal circumstances and in the absence of any other evidence, in light of the fact that the 1st claimant was receiving legal advice prior to submission of his claims, I would find that it was reasonably practicable to bring both the claims within the time limits prescribed period by Statute.

17. Although during the course of oral evidence there has been reference to the 1st claimant suffering from serious ill health this has not been offered as a reason why the claims were not brought in time and there is no medical evidence relating to the 1st claimant's illnesses or the way he may be affected by them.

18. However, I find that it the circumstances of this particular claimant. it was not reasonably practicable for him to be able to bring his claims in time because, when he attempted to submit his claims within the prescribed time period on 13 March 2017, he was unable to comply with the unlawful requirement to pay a fee or obtain remission of the fee. He was subsequently informed that his claims had been rejected on 30 March 2017 and he submitted a fresh ET1 on 11 April 2017, a period of time which I find was reasonable

19. In making a finding that it was not reasonably practicable for the 1st claimant to submit his claims within the time period prescribed by Stature and that he then submitted his claims within such further period as was reasonable, I have regard to any prejudice that the respondent may suffer as a result of this. In light of the fact that the claim from 13 March 2017 is going to be reinstated administratively by virtue of the fact that the Supreme Court has found that the requirement to pay a fee is unlawful, the respondent will not be in any worse position that it would have been had claim of 13 March 2017 been accepted as it should have been, consequently, I do not find that the respondent suffers any prejudice as a result of the finding above.

20. In conclusion, for the reasons given above I find that it was not reasonably practicable for the first claimant to submit his claims for unfair dismissal and unlawful deduction of wages within the time limits prescribed by Statute, and that he submitted his claims within such further period as was reasonable in all circumstances.

21. In respect of the naming of the correct respondent to these proceedings; Ms O'Brien submits that this is not a minor mistake made by the claimant and that in accordance with the authorities it is not in the interests of justice to change the name of the respondent now. She submits that it was clear to the claimant that Rabbi Weiss was not his employer because he does not hold a statutory title and is not an owner of the business.

22. I am not persuaded by this argument. It is clear that the 1st claimant has little or limited understanding of business mediums. He was of the opinion that Rabbi Weiss was 'his boss' and that it was he who employed him. Whilst I accept that the Appellant had some legal advice during and after his disciplinary process it is unlikely that the advice received extended to identifying the correct employer, particularly as the claimant completed the ET1 himself. It is the first claimant's evidence that he worked to Rabbi Weiss; that that was who he thought employed

him and therefore I find that it is a commonly made error on the part of claimants. Rabbi Weiss is an integral part of the respondent, albeit he is not a director or a shareholder he is nonetheless an integral part of the respondent organisation and a person that this claimant has worked to throughout his period of employment with them.

23. Therefore under rule 12 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2015 I find that I am able to amend the name of the respondent to Yeshivas Lubavitch Manchester, so the name of the respondent will be amended to read Yeshivas Lubavitch Manchester and the records will be amended accordingly.

24. Having notified the parties of my decisions I then went on to discuss listing of the matter for hearing and the case management of the claims. I full explained to Mr Maphosa what he would be required to provide in respect of a schedule of loss, disclosure of documents and production of witness statements and bundles. Ms O'Brien confirmed that the respondent would be responsible for the preparation of the bundle and I explained to the claimant the purpose of a joint bundle and what should be included in it.

25. Because today was the start of Rosh Hashanna Ms O'Brien was unable to obtain dates of unavailability of her witnesses. Both parties were given 7 days to provide dates of unavailability to the Tribunal after which time the matter would be listed for hearing at the Manchester Employment Tribunal for disposal within one day including remedy if appropriate.

Employment Judge Sharkett

Date 25 October 2017

JUDGMENT SENT TO THE PARTIES ON

25 October 2017

FOR THE TRIBUNAL OFFICE