



EMPLOYMENT TRIBUNALS

Claimant: Mr A Clements
Respondent: Bimal Kumar (1)
Leather & Luggage Limited (2)
Before: Employment Judge Maxwell (in Chambers)

JUDGMENT

1. The first respondent's application for a reconsideration is refused.
2. The first respondent's application for a stay is refused.

REASONS

1. By a letter of 20 July 2018, the first respondent applied for a stay and reconsideration of the judgment given to the parties on 15 June 2018 and written reasons sent on 17 July 2018.

Reconsideration

Rule 72

2. In accordance with Rule 72(1):

An Employment Judge shall consider any application made under Rule 71. If the Judge considers that there is no reasonable prospect of the original judgment being varied or revoked [...] the application shall be refused and the Tribunal shall inform the parties of the refusal [....]

Generally

3. The first respondent's representations overlap with points made during the hearing, or which could then have been made, and the interests of justice are not served by allowing an unsuccessful party to simply re-argue a point on which they lost.

Grounds Raised

4. When the claimant agreed to employment with the first respondent, the latter did not at the time say that he was himself a mere employee. Evidence in that regard given to the Tribunal after the event does not retrospectively change the position between the parties, viewed objectively, at the time the claimant agreed to enter into employment.
5. The absence of payslips being provided to the claimant and him being paid cash was consistent with employment by the first respondent. The first respondent providing his own payslips to the Tribunal does not retrospectively change the position between the parties.
6. The apparent absence of The Traveller (UK) Limited from the Companies House website was not a factor relied upon in deciding the identity of the claimant's employer.
7. The first respondent's oral evidence at the hearing included that no company names or anything of that sort was mentioned during the discussion when the claimant agreed to enter into employment and a finding to that effect was made by the Tribunal.
8. The claimant's uncertainty by the time of his dismissal (whether as a result of till receipts or otherwise) as to the correct identity of his employer, reflected in him suing more than one respondent, does not retrospectively change the position between the parties.
9. The claimant did not see the lease of the premises, nor would this have been expected. Providing this document to the Tribunal does not retrospectively change the position between the parties.
10. If the first respondent wishes to avoid personal liability and facilitate employment by means of a corporate entity, then he might consider utilising an offer letter, contract of employment, a statement of initial employment particulars, or some other document given to the employee identifying the company as their employer.

Conclusion

11. The grounds raised have no material impact on the findings made by the Tribunal on this point at paragraphs 19-24 and 41 of the written reasons.

12. For the reasons set out above, I consider there is no reasonable prospect of the original judgment being varied or revoked. Accordingly, the reconsideration application is refused.

Stay

13. No separate grounds were advanced for a stay and this application is refused.

Employment Judge Maxwell

Date: 7 August 2018

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE