



EMPLOYMENT TRIBUNALS

Appellants: 1. Academy Music Group Limited
2. Live Nation (Music) UK Limited

Respondent: Alison Joy Acton, Environmental Health Officer at Trafford Council

RECORD OF A PRELIMINARY HEARING

Heard at: Manchester

On: 7 November 2023

Before: Employment Judge McDonald (sitting alone)

Representatives

For the appellants: Mr J Hart, counsel

For the respondent: Mr J Parry, solicitor

PART ONE CASE MANAGEMENT SUMMARY

Introduction

1. On 7 November 2023 I conducted a public preliminary hearing in this case. The case is about the appellants' appeals against the prohibition notices issued against them by the respondent. The appellants were represented by Mr Hart and the respondent by Mr Parry. The respondent had provided a bundle of documents which included the relevant authorities. The appellants had also supplied a skeleton argument, chronology and their own bundle.
2. Employment Judge Horne had listed the public preliminary hearing to consider whether the appeals were brought in time and, if not, whether time for bringing them should be extended under rule 5 of the Employment Tribunal Rules 2013 ("the ET Rules").
3. I decided that the appeals were brought in time. My Judgment of today's date confirms my decision. I gave oral reasons at the hearing. Neither party asked for those reasons in writing. Briefly, I decided that the prohibition notices were served on 7 September 2023 and so the appeals lodged on 27 September 2023 were within the 21 day time limit for appeal in rule 105 of the ET Rules.

Next Steps

4. Mr Hart submitted that I should grant the appellants' applications to cancel the prohibition notices at this hearing. That was because the respondent in its correspondence appears to have accepted that the prohibition notices are "null and void" because the appellants have provided evidence relating to the structural safety of the mezzanine area of Victoria Warehouse which is what the prohibition notices are about.
5. Mr Parry for the respondent said that he had not come prepared to deal with the substantive issue of cancellation of the prohibition notices today. The ET Rules require at least 14 days' notice of any preliminary issue to be dealt with at a preliminary hearing. Employment Judge Horne's directions did not say that any substantive issues other than the time limit point would be dealt with at this hearing. In those circumstances I decided it was not in accordance with the overriding objective to deal with those substantive issues today.
6. Mr Parry suggested that the final hearing in the case would need to be for three days. He said that was because there was an enforcement history relating to this matter which needed to be before the Tribunal. Mr Hart submitted that that enforcement history was not relevant. From my reading of the Supreme Court's decision in **HM Inspector of Health and Safety v Chevron North Sea Limited [2018] UKSC 7**, the Tribunal at the final hearing will not be deciding whether the respondent was correct to issue the prohibition notices based on what they knew at the time, but rather whether the risk to which the prohibition notices relate in fact exists based on what is known now. The respondent appeared to have conceded in correspondence that evidence had been provided to show that there there was no risk and that the prohibition notices were (to use Mr Parry's phrase at the hearing) "academic. Despite that, however, Mr Parry said that the respondent was not willing to consent to an order cancelling the prohibition notices. Given we were not dealing with the final hearing, he did not set out the respondent's position in full. I did make it clear, however, that it seemed to me from **Chevron** that the enforcement history might be of very limited relevance.
7. I suggested to the parties that the appropriate way to proceed would be to list the case for a final hearing for one day but to allow the appellants to apply to strike out the respondent's response to their appeal. Mr Parry and, initially, Mr Hart were not certain that the Tribunal can strike out a response to a prohibition notice appeal. It seems to me, however, that rule 105 of the Employment Tribunal Rules means that all the powers of the Tribunal which would apply in an Employment Tribunal claim would also apply in relation to an appeal. That includes the power to strike out an appeal or a response under rule 37 of the Employment Tribunal Rules. On further consideration, Mr Hart confirmed that the appellants did want to apply to strike out the respondent's response. I have therefore listed a public preliminary hearing on **15 March 2024** to consider that strike out application.
8. I have listed a final hearing on **10 June 2024** with a time estimate of one day.

Preliminary Hearing

9. The case is listed for a preliminary hearing on **15 March 2024** commencing at **10.00am** at **Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA** before a judge sitting alone. The time estimate is three hours. The issues to be considered are:
- (1) Whether the respondent's response to the appellants' appeals should be struck out on the basis that the response has no reasonable prospect of success;
 - (2) What Case Management Orders should be made in the case.
10. The Tribunal proposes that this hearing be held **by CVP**. Any representations about this should be made promptly.

Directions for preparation for the public preliminary hearing

11. The parties were in broad agreement about the directions which should be agreed. I have incorporated those in my Orders.

Suspension of the Prohibition Notices pending determination of the appeals

12. Mr Parry confirmed that the respondent consented to suspension of the prohibition notices pending determination of the appeal. That is confirmed in my separate order of today's date.

PART 2

CASE MANAGEMENT ORDERS

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Further Evidence

- 1.1 The respondent must by **19 December 2023** send any further evidence it has relevant to this case to the appellants.
- 1.2 The appellants must by **23 January 2024** send to the respondent any evidence in response.

2. Strike Out Application

- 2.1 The appellants must by **23 January 2024** send to the respondent and the Tribunal the grounds for their strike out application.
- 2.2 The respondent must by **13 February 2024** send to the appellants its response to the strike out application.

3. The Bundle

- 3.1 The respondent must by **8 March 2024** send to the Tribunal in electronic form the bundle of documents for the preliminary hearing which has been agreed with the appellants. The bundle should include this Case Management Order and my Judgment and suspension Order from today's hearing in addition to the grounds for strike out and the response to that application. Any evidential documents to be referred to at the preliminary hearing should be included in the preliminary hearing bundle.

4. Other Matters

- 4.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 4.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 4.3 All judgments and reasons for the judgments (but not case management orders) are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case. Parties are encouraged to make a note of any oral judgment given by the Tribunal as it may not be necessary then for written reasons to be provided. If written reasons are requested, they too will be published online and will be accessible to the public.



Employment Judge McDonald

Date: 7 November 2023

ORDER SENT TO THE PARTIES ON
14 November 2023

MISS K MCDONAGH
FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.