



Neutral Citation Number: [2017] EWHC 1748 (QB)

Claim No: LM-2014-000068

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

LONDON MERCANTILE COURT

Date: 10 July 2017

Before:

HIS HONOUR JUDGE WAKSMAN QC

(sitting as a Judge of the High Court)

THE ENGLISH ELECTRIC COMPANY LIMITED

Claimant

- and -

ALSTOM UK

Defendant

David Lewis QC and Thomas Corby (instructed by Clyde & Co. LLP Solicitors) for the Claimant

Stuart Benzie (instructed by Pinsent Masons LLP Solicitors) for the Defendant

Hearing dates: 22 and 23 May 2017

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

INTRODUCTION

1. In early 2013, Mr Edmund Critchley was diagnosed with malignant mesothelioma. In April 2014 he brought proceedings against Associated Electrical Industries Ltd (“AEI”). He said that he had been employed by AEI over the period July 1965 to October 1967 in the turbine business and it was then that he was negligently exposed to asbestos. AEI subsequently admitted that it was his employer and later effectively admitted liability by failing to show cause why judgment in default should not be entered against it. AEI subsequently paid compensation to Mr Critchley and the total amount it has expended, including its own costs, is agreed to be £850,672.45. Sadly, Mr Critchley has now died.
2. In 1967, AEI and the Claimant in this action, The English Electric Company Ltd (“EE”) became members of the same corporate group. On or about 1 April 1970, and as part of an internal reorganisation, AEI transferred its turbine and generator business to EE. The minutes of EE recording this transaction stated that EE “had agreed to indemnify AEI Ltd against any claims arising on completed and uncompleted contracts as at 1 April 1970.” (“The EE Indemnity”).
3. Then, as part of a joint venture transaction and pursuant to a sale and purchase agreement dated 21 March 1989 made between EE and the present Defendant, Alstom UK (“Alstom”), the latter acquired the turbine business from EE. By clause 2.2(a) of that agreement, Alstom agreed to “assume responsibility for the satisfaction of all the liabilities... and indemnify the vendor [EE] against all proceedings, claims and demands in respect thereof” (“the Alstom Indemnity”).
4. As against Alstom, EE now contends that:
 - (1) AEI was indeed liable to Mr Critchley as alleged;
 - (2) EE was and is bound to indemnify AEI in respect thereof pursuant to the EE Indemnity, and
 - (3) Alstom is now liable to indemnify EE pursuant to the Alstom Indemnity.
5. Alstom has defended this claim on the basis that despite its admission of liability, AEI was not in fact liable to Mr Critchley at all. This is because it was not in truth his employer and was not otherwise liable to him. Instead, Alstom says that Mr Critchley was in fact employed by a subsidiary of AEI called AEI (Manchester) Ltd (“AEIM”). EE rejects that contention, maintains that AEI was the true employer but adds that even if he was in some sense employed by AEIM, the latter was at all times acting as agent for AEI which was therefore the ultimately liable party anyway.
6. In different proceedings between the same parties in connection with another mesothelioma victim, a Mr Oliver, Alstom had admitted that he was employed by AEI but, among other things, contended that the scope of the EE Indemnity did not extend to employment claims; accordingly, EE was not liable thereunder to AEI and similarly Alstom was not liable to EE. His Honour Judge Mackie QC decided that issue (and others) against Alstom in a decision numbered [2015] EWHC 924 (“*Oliver*”) and this was upheld on appeal.
7. Alstom agrees that if EE was liable to AEI under the EE Indemnity, then it is liable to EE on the Alstom Indemnity.

THE EVIDENCE

8. Essentially, this case turns on pure questions of fact including what can or should be inferred from certain undisputed facts or pieces of evidence. I heard no live evidence but instead have had detailed submissions on a wide variety and number of documents said to point either to AEI or to AEIM as Mr Critchley’s employer. I do have written evidence in the form of reports from two

expert accountants, Mr Djanogly instructed by EE and Mr Harding, instructed by Alstom as to what can and cannot be drawn from certain published accounts of AEIM.

9. What I do not have is any contract of employment between Mr Critchley and AEI (or anyone else) nor are there any written particulars of such employment.
10. I will set out below the relevant documents which are before me and then analyse their effect in the light of the submissions made to me about them.

RELEVANT CORPORATE STRUCTURE

11. I begin by noting that at all material times, AEIM was a subsidiary of AEI. It was based at Trafford Park, Manchester and had originally manufactured turbines and turbine parts. Until 31 December 1959 AEIM was known as Metropolitan-Vickers Electrical Company Ltd (“MV”) after which it changed its name to AEIM. Similarly, another AEI subsidiary called The British Thomson Houston Company Ltd (“BTH”), based in Rugby, changed its name to AEI (Rugby) Ltd (“AEIR”) on 1 January 1960. Finally, a further subsidiary based in Woolwich called Siemens Edison Swan Ltd (“SES”) changed its name to AEI (Woolwich) Ltd (“AEIW”).
12. This renaming was part of a restructuring within the AEI Group whereby the business and assets of the subsidiaries were transferred to AEI which were then constituted as divisions of AEI’s business. One effect of this was that the turnover and profits of those businesses would all be subsumed within AEI’s accounts and would not be separately shown in the accounts of the subsidiaries. One benefit of that was to make it much more difficult for competitors of AEI to see how well (or not) its individual businesses, as previously carried on by the subsidiaries, were faring.

EARLY STATEMENTS OF INTENT

13. These changes were presaged to some extent by a discussion of the intended restructuring given in a talk to staff by George Walker in September 1958. He noted that the Board of AEI had said that in future there would not be two or more companies (i.e. MV, BTH and SES) within the group all competing for the same work; rather, one type of product would be made in one division of AEI, another type in another division and so on. The turbine generator division would be managed by MV and the heavy plant division by BTH. The former operating companies (i.e. MV and BTH and SES) would now control and supervise the divisions of AEI on behalf of AEI and would approve policy and budgets and subject to that control, the divisional General Manager and Commercial Manager would be authorised to carry on the day-to-day business of the division. The divisions would be AEI divisions and not just a part of the managing company. The fact that the divisions of AEI were not made into full-sized subsidiary companies meant that they were not liable to file accounts which would show the turnover, profits etc of a particular division. The new system would allow for new lines of promotion by means of divisional appointments and appointments in management companies.
14. Alstom relies on an earlier part of the talk where Mr Walker had said that management companies would be interposed between the parent company (i.e. AEI) and the divisions (of AEI) so that AEI would still not deal with the problems of manufacture and sales, but would remain an organisation for effecting financial control and co-ordination (and through these the ultimate management) of its trading divisions and subsidiary companies. Alstom suggests that this shows that the subsidiaries would deal with the day to day operations of the divisions managed. I see that but I am not sure that this conflicts with the passages later in the talk referred to in paragraph 13 above referring to the role of the subsidiaries purely as manager and not trading companies with their own turnover, general workforce etc. Furthermore if the picture was not entirely clear then, it became so later, in my view.

15. This talk had been preceded by a decision of the Board of AEI on 19 June 1958 to place the turbine division under the management of MV this being a trading division of AEI. It then referred to the managers and chief engineers who would be “executives” of the division who would carry out day-to-day business on behalf of the AEI division.

ASSET SALE BETWEEN AEI AND THE SUBSIDIARIES

16. By a series of sale and purchase agreements made between AEI and the various subsidiaries including MV on 31 December 1959 each subsidiary transferred to AEI the whole of its undertaking, property and assets and thereafter would “cease to carry on business”. Clause 3 of the agreements provided that the subsidiary would “use its best endeavours to procure all its officials and employees to concur in the transfer of their contracts of service to AEI as from the date of sale or such other date as AEI may specify”.
17. This reflected the advice of the AEI Accounts Sub-Committee given on 23 July 1959 that on “divisionalisation”, “the basic intention should be ultimately for all assets to be owned by AEI. AEI would enter into management agreements with each Group Management Company giving them jurisdiction over the assets they would be operating”.
18. In the December 1959 issue of *Topic*, AEI’s staff magazine, it was noted that the employees of MV and other subsidiaries had been “invited formally to join the AEI payroll”. Indeed, in the *Oliver* case Alstom accepted that Mr Oliver had since 1960 become an employee of AEI though earlier employed by BTH.¹ This issue of the magazine also said that subsidiaries would operate as management companies and be responsible for a number of product divisions of AEI.
19. As noted above, the subsidiaries were renamed on 1 January 1960 and then, by a Power of Attorney granted by AEI to AEIM “It was resolved that...[AEIM]... be appointed the Company’s [AEI’s] Attorney in its name and on its behalf to execute all documents (including any documents necessary and proper to effect any alterations or variations in the terms of any document previously entered into by... [AEIM]... in its own name the benefit and liabilities of which are now vested in this Company)...”.

AEIM’S ACCOUNTS

20. AEIM’s accounts underwent an important transformation as from the year ended 31 December 1960 i.e. the first year of its operation under the new system and new name. Thus, profit before tax was now only £10,000 as opposed to £1.2 million in 1959 and net profit was now only £6,125 compared with £573,113 in the previous year. And on the balance sheet, AEI was now shown as owing £6.412m to AEIM on a loan account but otherwise there were no assets. While for 1959 there were fixed assets of £17.4m. And where there had been cash at bank of £301,766, none was shown for 1960. Current assets were now £6.42m (i.e. the loan due from AEI) as opposed to £57.4m for 1959. An explanatory note read “the company ceased to trade on 31 December 1959 when its business was taken over by Associated Electrical Industries Ltd on whose behalf any operations during the year ended 31 December 1960 have been carried on. The net assets at 1 January 1960... were transferred to Associated Electrical Industries Ltd and the Profit and Loss account of the company shows only the income received from the trade investment.”
21. The position remained the same in future years. The loan remained static and the profit stayed at £6,125. Note 1 to the accounts for the year ended 31 December 1961 and thereafter stated that “no account has been taken in the above Balance Sheet of contracts entered into and business undertaken by the company on behalf of Associated Electrical Industries Ltd on whose behalf the company’s trading operations were carried on”.

¹ Indeed I note that according to paragraph 14 of the judgment in *Oliver* it was common ground in that case that the restructuring entailed the wholesale transfer of employees from the subsidiaries to AEI.

22. A similar though not identical change was reflected in the accounts for AEIR. The note for such accounts as at 31 December 1960 read as follows “(1) with effect from 1 January 1960 the company transferred its entire assets, liabilities and trading activities to its holding company, Associated Electrical Industries Limited. It has since operated as a management company without remuneration and all expenses connected with that activity have been charged to Associated Electrical Industries Limited. There is therefore no profit and loss account for the year ended 31 December 1960... (4) the information required by section 196 of the Companies Act is as follows... Directors emoluments for management services... £106,248 (Borne by holding company)... Purchase of additional pension benefits for a past executive director... £9,509 (Borne by holding company).” The holding company here was AEI.
23. I will deal below with what can and cannot be drawn from these accounts in terms of who was employing Mr Critchley at the relevant time and at that stage deal with the opinions of Mr Harding and Mr Djanogly insofar as necessary.

MATERIAL RELATING DIRECTLY TO MR CRITCHLEY

24. Mr Critchley’s claim stated that he was employed by AEI, a proposition later accepted by it, the only defendant in those proceedings. This was clearly and concisely set out in Mr Critchley’s witness statement dated 21 April 2014 at paragraphs 15 to 36. He said that AEI was his employer at all the various sites at which he worked.
25. He made reference to two documents in particular. First, there was a certificate of all of his industrial training from January 1962 through to December 1968 and it is a contemporaneous certificate given by AEI at Trafford Park. The second was a schedule of employment history produced by HMRC in February 2014 in respect of an enquiry made on his behalf. This showed AEI as being the employer for the tax years 1961/62, 1962/63 and 1965/66 through to 1967/68. There is no reference to AEIM. The medical report written by Mr Critchley’s specialist following a consultation on 4 February 2014 also refers to AEI as his employer and one assumes this is what Mr Critchley had told him.
26. However, further tax-related documents then emerged. The “facing card” for 65/66 had printed on it the words “AEI (Manchester) Ltd”. And the “deduction card” for that year had “AEI (M/C) Ltd” put in manuscript. The deduction card for 66/67 had no details in the employer section at all but “AEI (Manchester) Ltd” was written on the facing card for that year. Finally, for 67/68, the deduction card had “AEI (Manchester) Ltd” printed on it while the facing card had “AEI Ltd” written on it.
27. As a result of the uncertainty engendered by these documents, Mr Critchley’s solicitors decided to make an application to join AEIM as an alternative defendant but it proved not to be necessary since AEI later admitted that it was the employer anyway prior to admitting liability. In those circumstances, I do not think that anything adverse to EE’s case can be drawn from the application to join AEIM which was not pursued.
28. I deal further with the significance of the facing and deduction cards below. I should add here, however, that Alstom did try and obtain information from HMRC as to who it regarded as the employer in the light of the various HMRC documents referring to AEI and AEIM. However, HMRC was not able to assist without the consent of Mr Critchley, which of course could not be obtained.

OTHER MATERIALS

Other HMRC schedules

29. In the course of the litigation, Alstom undertook a search for AEIM related documents and it found a number of HMRC employment history schedules for other employees over the period

61/62 through to 73/74, where the employer was given as AEIM. Also, on the National Insurance recording system, there were citations of AEIM as employer.

30. What is not clear from this is how many other entries there were for AEI, as opposed to AEIM as employer. This is because Alstom conducted a search over 10 days reviewing approximately 2,300 files in 7 filing cabinets and approximately 200 record cards. According to Ms Ganderton, an assistant to Alstom's UK General Counsel, this was the entirety of historic material still in Alstom's possession. It was not complete, however, since some records had been dispersed when Alstom had sold the business to Converteam. However, she and her colleague only put to one side in the course of their search, files which made reference to AEIM or to Mr Critchley – see paragraph 10 of her witness statement. It appears that they did not put to one side documents saying AEI even if not saying Mr Critchley as well. That is an important omission because, for all we know, there were as many documents indicating AEI as an employer as there were AEIM, if not more. Indeed the AEI group as a whole had some 100,000 employees. Other than that, Mr Field, a colleague of Ms Ganderton also located some historic documentation relating to AEI and AEIM pension schemes.

Advertisements

31. A number of historic adverts have been found. Some refer to vacancies at "AEI" or "Associated Electrical Industries Ltd" but in a number of them the address to reply to was given as AEIM. The only advert for a position equal to Mr Critchley's was "mechanical and electrical engineers". It is headed AEI and then there are further references to AEI and its instruments division but with applications to go to the Personal Manager at AEIM.

Individual Tax Return

32. One tax return of an individual was found which refers to the employer as "AEI (M/C) Ltd".

Apprentice forms

33. There are a number of historic apprentice training assessment forms and they are headed "AEI (M/C) Ltd" apprentice training school. There is also one application form for a trade apprenticeship course headed "AEI (Manchester) Ltd" and some correspondence addressed to AEIM. However, as regards some of these application forms EE then followed the trail further and found related documents to such applicants which showed that the apprenticeships were with AEI - see bundle E2/57/441A-441H and also E2/488 and 488A-C.

Pension documents

34. There are then documents referring to the AEIM pension and life assurance scheme as well as to the AEI pension scheme. This would suggest pension schemes in both companies. One further document refers to those who were previously a member of the Manchester pension scheme but were now in the AEI scheme.

Particulars of Employment

35. The only particulars of employment document found was one that is headed "AEI - Woolwich Works" for 1966-1967. That is of some indirect value because it shows that at least this employee appears to have been employed by AEI at the Woolwich site which of course had been previously operated by AEIW, formerly SES.

Availability of documents

36. It is the case that Alstom is likely to have had other documents which may well have shed more light on Mr Critchley's employment position but, as noted above, they no longer have them. They would have gone wholly or mainly to Converteam when the latter acquired the business. Alstom made no provision for the retention of any documents nor did it seek an indemnity from Converteam. Had it done so, then not only would it have been protected but also absent settlement

Converteam would no doubt have been a party to this action. EE has sought to rely on the maxim “*omnia praesumuntur contra spoliatorem*” that where a party has disposed of documents or information relevant to a particular issue, the Court should presume against that party when resolving the issue. HHJ Mackie QC relied upon it in *Oliver* saying (in respect of a different issue but the same lack of documents) “..the Defendant passed documentation to Converteam in 2006 but chose not to retain control of the relevant documentation in relation to historical liabilities for which they were going to continue to bear responsibility. If documents are missing which might have contradicted what otherwise is, on balance, the likely and probable order of events it has only itself to blame.” He said that having noted (as do I) that neither side approached Converteam to try and obtain further documents. In the Court of Appeal the maxim was again deployed (see paragraph 25 of the judgment of Longmore LJ) but the Court then found that it was unnecessary to have recourse to it. I take the same approach – I think the maxim is applicable here but I reach the conclusions I do below, even without it.

ANALYSIS

37. Against that evidence and the opinions of the experts I consider the issue as to whether AEI was the employer. On any view, there is a significant number of documents referring on their face to AEIM as employer which are sometimes inconsistent with others pointing to AEI as the employer in the same year. Not all of these inconsistencies can be explained but it is not necessary for me to do so. I have to look at all the evidence in the round and the inferences which can be properly drawn and decide whether on the balance of probabilities Mr Critchley’s employer was indeed AEI.
38. First, I consider that real weight must be given to the fact that from Mr Critchley’s own point of view he saw his employer as being AEI. He did so over the various places where he worked. I do not accept that he only came to that view because of his employment schedule or the certificate of training. The fact that he later proposed an alternative case does not alter the position as noted above.
39. Second, significant weight must also be placed on AEI’s admission that it was the employer and maintained when it was aware that Mr Critchley was proposing an alternative case as against AEIM. Such an admission cannot have been lightly made especially since, as must have been clear to AEI once it accepted that it was his employer over the relevant period when he was undoubtedly exposed to asbestos, that liability was likely to be established against it.
40. I next consider what was intended before the changes made in 1960. It seems clear from the talk and other documents referred to above that the overall intention was not to have the subsidiary acting as a separate trading company whose accounts would show detail of turnover, profits, costs etc for its particular product range. Instead there would be a rationalised set of divisions of AEI itself. That would not mean the end of the subsidiaries because they were clearly intended to have a management role but that was quite different from operating as a trading company.
41. Those intentions were then put into effect in the asset sale agreements. The entity which now would have the assets with which to trade in the particular product ranges was AEI. As a logical adjunct to that there was the “best endeavours” provision to transfer the employees as well.
42. The divesting by the subsidiaries of their assets and indeed turnover is then made plain by the accounts of AEIM and indeed AEIR. The turnover and assets have simply disappeared from the accounts. On that footing, it would be unlikely for AEIM to have any significant number of employees of its own since it would incur payroll costs, none of which are shown in the accounts. That supports the notion that Mr Critchley was not employed by it; this is one of the key points made by Mr Djanogly.
43. However, the notes in these accounts make clear that AEIM was not or might not have been doing nothing. It had some sort of management or agency role (consistent with the grant to it of

the power of attorney) so that if it did carry out any operations, this was done on behalf of AEI. In the same statement it is made plain, however, at the outset that AEIM had ceased to trade on 31 December 1959.

44. Mr Harding, the expert retained by Alstom has suggested that nonetheless AEIM “could” still have employees of its own. He suggested that there may have been trading by AEIM but the costs of so doing would then be “recharged” back to AEI in the light of the fact that it did not have any cash of its own. The difficulty with this thesis is that throughout the relevant period there is a loan liability on the part of AEI to AEIM (which I suspect arose as consideration for the transfer of the assets in 1960). That inter-company indebtedness has not fluctuated. That is very odd if the indebtedness in fact would change depending on whether further sums were recharged to AEI and then had to be paid back to AEIM.
45. It is true that Mr Harding has sought to explain how the year end accounts need not show any fluctuations essentially on the basis that any debits and credits would be properly cancelled out by the year end. But all of this is pure speculation in the view of Mr Djanogly and I agree.
46. There is in fact no actual evidence of such recharging at all (whether in the accounts or otherwise) to reflect the notion that AEIM was trading in its own right but simply funded by AEI.
47. In my judgment the much more natural and commercial analysis is that to the extent that AEIM incurred any costs in relation to any activity they were charged directly to AEI which funded them. The loan position would not thereby be affected because as the accounts suggested, at all times, AEIM was simply acting as an agent for AEI. That is consistent with the fact that it did not appear to have any cash at the bank after 1960. Moreover the content of the AEIM accounts as portrayed above is wholly consistent with the asset sale and the term requiring a “best endeavours” transfer of employees.
48. Although the narrative in the AEIR accounts is in somewhat different terms to the notes in the AEIM accounts, it still says that AEIR operates as a management company only and indeed all expenses are “charged” (not recharged) to AEI and so there is no profit and loss account. Even the director’s pay for management services comes from AEI. All of this support EE’s case rather than Alstom’s.
49. Accordingly, when the AEIM accounts are viewed realistically, I consider that they are important supporting evidence that AEIM was not Mr Critchley’s employer.
50. Alstom has submitted that even if AEIM was in all or most senses simply acting on behalf of AEI this does not mean that it could not have employees of its own. In theory I agree although that would probably be limited to a few high-level employees not with the kind of role undertaken by Mr Critchley. But on the other hand, I think it likely that it would not, or need not, have a significant number of employees. After all, it could manage or direct the employees of AEI, just as it would manage AEI’s assets.
51. So far as the other documents in respect of other individuals are concerned, I do not consider that they are significant either way and certainly not as against EE:
 - (1) The advertisements mainly show that the vacancy is for AEI even if the party to write to is AEIM. At best, this would support the notion of AEIM as no more than a manager;
 - (2) The apprenticeship reports do point to AEIM having a role but again, it could be as manager and another possibility is that this reference (admittedly in pre-printed form) is shorthand for the Manchester site. The collection of school leaver application forms are mainly addressed to AEIM although one of them is addressed to AEI; but one then has the other collection of documents discovered by Alstom where the reference is to AEI – see paragraph 33 above;

- (3) Equally while there is a reference to pension schemes for both AEI and AEIM the latter could be referred back to the scheme set up prior to the changes when AEIM (then MV) was undoubtedly trading in its own right;
 - (4) The HMRC schedules showing AEIM as the employer and the National Insurance documents to the same effect obviously do suggest that for the employees to which they relate. But as mentioned above, it is not clear how many AEI documents of a similar nature would have been thrown up if they were also earmarked in the search. There might be many more of them than those which refer to AEIM. Also, if it is assumed that the schedules are correct in their identification of the employer then one should assume that Mr Critchley's schedule shows AEI as the correct employer and that, after all is the critical point.
52. In that context however, one then has to deal with the facing and deduction cards which are specific to Mr Critchley and which nearly all point to AEIM. HMRC has indicated to Alstom in a telephone conversation that it generally regards these cards as conclusive of employment but on the other hand (a) that is not evidence in proper form (b) the issue is not the fact of employment but the identity of the employer and (c) as a matter of law, HMRC's view as to the employer is not necessarily conclusive. In any event, this does not explain the employment schedule here unless it can be said to be demonstrably wrong. Given the fact that there is also the training certificate provided by AEI and the fact that not all of the cards point to AEIM, I am not prepared to come to that conclusion.
53. I also consider, having looked at the documents as a whole, that there was probably an extent to which the companies names were used interchangeably so far as operations at Manchester were concerned. This can lead to a confusing impression. This is especially so where the reference is to AEI "(M/C)" as opposed to "Manchester" when it is not clear which entity was really being referred to - AEIM or AEI in its Manchester location. Mr Benzie says it is much more likely that AEI is used as shorthand for AEIM rather than AEIM is used as shorthand for AEI. I do not accept this where the AEI operation we are concerned with was in Manchester in any event. Thus it is possible that AEIM was used to mean AEI at "Manchester". I do not think one can make any safe assumptions about the accuracy of the use of paperwork in Manchester.
54. This is particularly so when, as it seems to me, the primary paymaster was on any view AEI because of what the AEIM accounts say.

CONCLUSIONS

55. Reminding myself that I am concerned only to determine the employer of Mr Critchley and no one else, I consider, having weighed up the evidence, that on the balance of probabilities EE has established that the employer was indeed AEI as alleged and as admitted at the time of the original claim. I accept that there are contra-indications and areas of uncertainty but these are not sufficient to displace that finding.
56. EE also alleges in the alternative that even if AEIM was the employer it was only acting as such as agent for AEI. It is not strictly necessary for me to decide this alternative point in the light of my finding in paragraph 55 above but I will do so briefly.
57. Alstom contends that EE's alternative argument is circular: either AEIM was in truth the employer or it was not. If it was not, the agency argument is not necessary. If it was, after a consideration of all the points, including the role that it played, there is no scope thereafter to conclude that it was acting as employer but only as agent for AEI.
58. I do not agree. Even if (for example and we do not have them) the contract of employment or its particulars did not say AEI but only AEIM it could still have been acting as agent for AEI. And given the documents pertaining to Mr Critchley which do refer to AEI, the latter could hardly be

said to be an undisclosed principal. In fact, of course, we do not have his contract or particulars of contract. But it seems perfectly feasible to me to say that AEIM might, as part of its management role, and being funded by AEI, have held itself out for example to HMRC as the employer and yet be acting for AEI in that regard especially if AEI was in fact the paymaster. If that was so, and AEI was the principal for these purposes, I cannot see why, as against Mr Critchley it could not be held liable to him on the claim - which is of course what AEI accepted. I recognise that the power of attorney itself might not necessarily have applied to contracts of employment but it does show in my view that AEIM was at best acting on behalf of AEI and was empowered so to act in certain respects by the power of attorney. The AEIM accounts then support this by referring to the actions of AEIM being on behalf of AEI.

59. Accordingly, my primary conclusion is that the true employer of Mr Critchley was AEI but if there was any sense in which AEIM could be his employer then it was only as agent for AEI for the reasons given above.
60. Either way, AEI was indeed liable to Mr Critchley on the claim and it correctly admitted that liability. Accordingly the Alstom Indemnity operates here and so EE succeeds in its claim.
61. I am most grateful to Counsel for their extremely helpful submissions. I will deal with consequential matters at the handing-down of this judgment.