



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mrs J Winter

Pauline Aldridge t/a Right Steps Day Care Ltd

Heard at: Bristol

On: 28 March 2018

Before: Employment Judge Pirani

Appearances

For the Claimant: in person

For the Respondent: in person and assisted by Mr Aldridge

REASONS

Background

1. Oral reasons were provided in this case on 28 March 2018. Subsequently, the parties requested written reasons.
2. By a claim received at the tribunal on 11 August 2016 the claimant, who was born on 25 September 1982, brought a claim against the respondent for notice pay, holiday pay and arrears of pay. Within the claim form the claimant says she was employed as an administration/relief support worker from 3 September 2015 until 22 June 2016. The claimant says she worked 40 hours per week at £10 per hour. According to the claimant, the respondent director closed the business down and sold goods without paying staff wages.
3. The respondent is the claimant's mother.
4. The claimant says she is owed:
 - i. 25 weeks wages in the sum of £10,000
 - ii. 4 weeks' notice in the sum of £1,600
 - iii. 9 days outstanding holiday in the sum of £720.
5. The claim was originally struck out for failure to pay a fee. By letter received at the tribunal on 15 December 2017 the claimant indicated she wished to have her claim



reinstated in light of the Supreme Court judgment in the Unison case. Attached to this letter was a copy of the original claim form.

6. The dates on the ACAS certificate are 20 July – 26 July 2016.
7. The respondent emailed the tribunal on 29 January 2018 saying the company was “stolen” from her at the end of June/July 2016. She goes on to say that it closed down in 2017 and is no longer active.
8. It transpires that Right Steps Day Care Ltd was incorporated on 9 October 2015 and dissolved on 30 May 2017.
9. Both the respondent and claimant were said to be directors and shareholders of the business. It is the respondent’s case that the claimant stripped the assets from the business.
10. The response form was later presented at the tribunal. Among other things, the respondent says she did not employ the claimant, who is her daughter. In addition it is said the claimant’s employment commenced on 11 January 2016 and ended on 21 June 2016. The response form says the business was closed by the claimant on 21 June 2016 when she locked the respondent out of the premises.
11. The tribunal wrote to the claimant on 6 February 2018 asking whether it is contended she was employed by the company Right Steps Day Care Ltd or the respondent in this case, Mrs Pauline Aldridge. The Claimant replied on 10 February 2018 saying she was employed by her mother prior to the opening of of Right Steps Day Care limited. She goes on to say that she then “had employment with Right Steps Day Care Ltd” until her resignation on 21 June 2016.
12. The tribunal wrote again on 20 March 2018 pointing out that Right Steps Day Care Ltd is a company which was dissolved on 30 May 2017. Accordingly, no claim can proceed against it. The claimant was asked to explain how, if at all, she is able to say the respondent, Mrs Pauline Aldridge, is liable for the monies claimed.
13. The claimant replied on 22 March 2018 saying among other things:
 - i. before her employment with the respondent to create and run the administrative side of the business, she was also employed by the respondent as a carer
 - ii. her employment was with the respondent and not with Right Steps Day Care Ltd

Issues

14. It was agreed at the commencement of the hearing that the fundamental issue in this case is whether or not the respondent employed the claimant. If the claimant was employed by the respondent, then further issues arise as to how much money the claimant is owed.



15. It was clarified at the start of the hearing that the claimant says she was employed by the respondent from 1 September 2015.
16. Section 230(1) Employment Rights Act 1996 defines 'employee' as 'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'. Section 230(2) provides that a "*contract of employment*" means 'a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing'.
17. The purpose of this definition is to distinguish between individuals dependent upon an employer for their livelihood on the one hand, and self-employed individuals, or independent contractors, on the other; between those working under a 'contract of service' and those working under a 'contract for services'; between those who are paid to do the job and those who are paid to get the job done.
18. The courts have rejected the notion that there is one single factor that can be determinative of employment status. Instead, the issue is approached by examining a range of relevant factors. One of the earliest formulations of the test is to be found in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, QBD*, in which Mr Justice MacKenna set out the following three questions:
 - a. did the worker agree to provide his or her own work and skill in return for remuneration?
 - b. did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of master and servant?
 - c. were the other provisions of the contract consistent with its being a contract of service?
19. A person in business on his or her own account will carry the financial risk of that business. Thus, payment by commission only or lump sum payment 'by the job', or the right to set the rate charged or to participate in the profits (or the bearing of responsibility for losses), will usually point towards self-employment. Conversely, payment of a regular wage or salary is a strong indicator of employment.

Documents and evidence

20. I heard oral evidence from both the claimant and the respondent.
21. Both presented me with separate bundles of documents. The respondent's documents were unpaginated. Because the issue in dispute was narrowly defined, very few of the documents were referred to by either party.
22. Some further documents were provided during the hearing, including an email from the claimant dated 24 May 2016.

Facts



23. After hearing the evidence, reading relevant documents and considering the submissions of the parties, I found the following relevant facts.
24. It is agreed that Right Steps Day Care Ltd, a day care business, was incorporated on 9 October 2015 and dissolved on 30 May 2017.
25. The unfortunate agreed background to this dispute is not only a business venture between mother and daughter which went wrong but also a soured personal relationship.
26. The fundamental dispute between the claimant and the respondent is whether or not the claimant was employed by the respondent and during what period.
27. Originally the claimant, who is the respondent's daughter, was employed by the respondent as a carer for the respondent's father, who was the claimant's grandfather. This employment commenced on 5 April 2015.
28. Towards the end of 2015 there was a discussion between the claimant and the respondent about setting up Right Steps Day Care Limited. Although this was effectively a joint venture it was initiated with the assistance of a £25,000 loan taken out by Mrs Aldridge.
29. The claimant says that on 1 September 2015 she signed a contract of employment with the respondent. The written contract is contained in the claimant's bundle and is seemingly signed by both the claimant and the respondent. It provides a start date of 1 September 2015 and provides that the claimant was employed as an administration/office manager/account manager. Duties and responsibilities included setting up the new business, sourcing premises and account management. The hours of work were said to be 40 per week and the pay was £10 per hour. Notice was one month.
30. The first fundamental factual dispute for me to determine is whether not this contract is genuine and agreed between claimant and respondent. The respondent's case is that the first time she saw this contract is during these proceedings. In addition, she says the font on the signature page differs to that in the main body of the contract.
31. The factual dispute is made more difficult because there does not appear to be any contemporaneous reference to this written contract. Further, it was not attached to any email. I will return to this dispute later in my conclusions section.
32. Although the written contract provides for payment at £10 an hour for 40 hours it is agreed that no payment was paid from the respondent to the claimant during September or October 2015.
33. In the event, Right Steps Day Care Ltd was incorporated on 9 October 2015. The claimant, in effect, set up the business with her and the respondent both as joint directors and joint shareholders. The business employed a number of staff.
34. The claimant was in charge of payroll. She submitted her hours to the company accountant. Only two payments were made to the claimant. One in January 2016 for



£811.04 said to be for 84 hours work. A further payment was made in February 2016 for £1,001.04 for 412 hours. Both of these payments were made to the claimant not by the respondent, but by Right Steps Day Care Ltd.

35. As I have already indicated, the relationship between mother and daughter became fraught. In November 2015 the claimant's directorship was terminated at the behest of the respondent. Later, in March 2016, the claimant was reappointed as director. Similarly, the claimant took steps to remove the respondent as director on 18 June 2016, but subsequently the respondent was immediately reinstated as director.
36. The fraught relationship is further evidenced by the fact that on 14 June 2016 the company accountant contacted the claimant saying the respondent would transfer 100% of the share capital of Right Steps Day Care Ltd to the claimant on confirmation that the respondent would not be liable for, among other things, the lease agreement. Things came to a head on 21 June 2016 when the claimant emailed the accountant saying she resigned as director and shareholder of Right Steps Day Care Ltd.
37. Ultimately, Right Steps Day Care Ltd was dissolved on 30 May 2017 and therefore no longer exists to be sued as a party.

Conclusions

38. The first fundamental dispute is whether or not the contract purportedly entered into on 1 September 2015 is genuine. This is not an easy dispute to resolve because of the absence of contemporary evidence.
39. Despite the respondent's protestations, the signature on the document is very similar to other examples presented. Further, the respondent seems to accept herself that she does not "do paperwork" and is not a "paperwork person".
40. On the balance of probabilities, I find that the contract was genuine. That is not to say, however, that the respondent has lied. The paperwork in this case is voluminous. I find the respondent has no genuine recollection of the contract despite the fact that it existed.
41. However, that is not necessarily the end of the story.
42. It is noteworthy that after the claimant became director and shareholder she made no complaint about the absence of salary. Further, on 24 May 2016 the claimant emailed the accountant pointing out that both her and the respondent were still not being paid. The claimant went on to ask whether or not wages were meant to be "added to the expenses" and then put in as a "director loan type thing". It was suggested that when the business picked up they would be able to take wages which were owed. The claimant goes on to explain to the accountant that she had been speaking to her friend who runs her own business who also did not take a wage.
43. Further, after the claimant resigned she wrote to the respondent on 30 June 2016 saying as an employee of Right Steps Day Care Ltd (and therefore not the respondent) she was entitled to payment for hours worked. This echoes an email the claimant sent to the tribunal on 10 February 2018 saying she was employed by the respondent *prior* to the



opening of Right Steps Day Care Limited. The claimant went on to say in the same email that she was *then* employed by Right Steps Day Care Ltd until her resignation on 21 June 2016.

44. Once the claimant appointed herself as director and shareholder of Right Steps Day Care Ltd she did not act as employee of the respondent. In particular, the claimant accepted that she would not take wages until the business picked up. The claimant submitted her own hours to the accountant and was then paid directly by Right Steps Day Care Limited.
45. Taking all this into account, I conclude that when Right Steps Day Care Ltd was incorporated on 9 October 2015 the claimant's employment with the respondent came to an end by mutual agreement. Thereafter, effectively, the claimant was running the business as a director and shareholder. Although she was potentially an employee of Right Steps Day Care Ltd, she was not an employee of her mother at that point. Although there was no written directors agreement it is accepted by both the claimant and the respondent that money would be taken out of the business once it started to make money.
46. Accordingly, as at 21 June 2016 the claimant was not employed by the respondent. The claimant's employment with the respondent ended on 9 October 2015.
47. Although wages are owed from 1 September – 9 October 2015 (when the claimant was employed by the respondent) the claimant is out of time to bring such a claim. The claim was originally issued on 11 August 2016, some 10 months after the termination of employment.
48. Section 23 Employment Rights Act 1996 provides that a complaint about outstanding wages must be presented to the tribunal:
 - i. before the end of the period of three months beginning with the last deduction in a series of deductions, or
 - ii. within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
49. Similar provisions apply in relation to the claim for outstanding holiday pay. Notice pay would not be payable as employment ceased by mutual agreement.
50. The employee must show that it was not reasonably practicable to present her claim in time. The claimant has not done so. It was reasonably practicable for the claimant to bring such a claim in time. Accordingly, the tribunal is not have jurisdiction to consider such a claim.

Employment Judge Pirani

17 April 2018

Sent to the parties on:



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