



EMPLOYMENT TRIBUNALS

Between:

Ms Z Sadriyeva
Claimant

and

Larkfleet Ltd
Respondent

At an Open Attended Preliminary Hearing

Held at: Nottingham

On: Monday 10 December 2018

Before: Employment Judge Blackwell (sitting alone)

Representation

For the Claimant: In person
For the Respondent: Mr E Musa, Solicitor

JUDGMENT

The decision of the tribunal is that all of the Claimant's claims are dismissed because the tribunal does not have jurisdiction to hear them.

REASONS

Introduction

1. The purpose of today's hearing is to determine two points. The first is, having regard to section 83(2)(a) of the Equality Act 2010, whether the tribunal has jurisdiction to hear Ms Sadriyeva's claims of unlawful discrimination in respect of the protected characteristics of race, disability and sex. The second issue is the question of whether Ms Sadriyeva's claims were brought in time. Given my decision as to the first, there is no reason to determine that issue.

2. Ms Sadriyeva represented herself and gave evidence on her own behalf. Mr Musa represented the Respondent (Larkfleet) and he also gave evidence. Both parties gave oral submissions and both provided documents. Mr Musa provided a bundle of documents in accordance with the tribunal's instructions. I allowed Ms Sadriyeva a bundle of documents today, which I appreciate she had sent to Mr Musa but he was unable to convert them into documents. Because most of them were already in Mr Musa's bundle and/or were familiar to him, I permitted Ms Sadriyeva to produce these documents.
3. The parties have behaved childishly throughout and that has not assisted. I should record that I cut short Ms Sadriyeva's cross-examination of Mr Musa because she repeatedly ignored my request to ask questions rather than to make statements. Mr Musa did not help by introducing tendentious and, at one point, inaccurate materials in his proof of evidence. I have therefore ignored paragraphs 8 j. and k. of his evidence and paragraphs 9, 14 and 16 save that the correct date of the dissolution of Zeta Economics Ltd is June 2018.

The law

4. The law is set out at section 83(2)(a) thus:

“83 Interpretation and exceptions

...

(2) “Employment” means—

(a) *employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;*

...”

Findings of fact

5. The Claimant was the sole Director and sole employee of Zeta Economics Ltd (Zeta) which she founded in 2012. The Company was dissolved as I say in June 2018. At page 63 of Mr Musa's bundle begins the Company's advertising material, including examples of work done, its pricing structure and a non-disclosure agreement entered into between the parties at page 88. At 91 is a public liability insurance policy in the name of Zeta.
6. The Respondent is a Company whose purpose is the construction and sale of dwelling houses. Like every other such company, they apply for planning permission on various sites. Some are successful, some are refused and

some go to appeal. Larkfleet use a range of consultants with specialities such visual impact, noise access and, in this case, economic impact assessment.

7. In 2016, Zeta was introduced to Larkfleet and the Claimant met with senior employees of Larkfleet. I accept that she told them that she would personally carry out any work they instructed her to do. There were instructions, approximately 10 in number, in 2016 and carrying through into 2017. There was clearly a contract between the parties, ie that economic impact assessments would be carried out and they would be paid for at the rate set out in the Company's pricing structure to which I have referred.
8. The Company tendered invoices (see for example page 39) and was paid in every case. I accept that the Claimant did all the work personally.
9. The parties fell out in August 2017, which has led to the current proceedings because the Respondent, on the advice of Counsel declined to use Zeta's impact assessment to assist in a planning appeal. Zeta's work was criticised by Counsel and the Respondent. The Claimant told me and I accept that she aspired to grow the Company; to take on employees and to be able to engage sub-contractors. In fact the economic reality meant that but for two occasions when she engaged sub-contractors to carry out telephone surveys, Zeta employed no one and no other sub-contractors were used because the level of business was insufficient. I also accept that the financial reality meant that the Claimant was not in a position to turn down work from Larkfleet or from anyone else.
10. However, it is clear that if the financial position had permitted, Zeta had the ability to pick what work it did. Unfortunately, the financial position of the Company worsened rather than improved. In 2016, work from Larkfleet amounted to some 30% of the Company's turnover of £77,000 but in 2017, the turnover was only £15,000 and 100% of the work was from Larkfleet. Both parties have referred me to a number of documents using various terms "Zeta", "consultants", "employ" "Zeta Economics" but it seems to me that they are used in lay terms and are of no assistance in determining the issue before me.

Conclusions

11. As I said at the beginning of the proceedings, the leading authority on this issue is the Supreme Court's decision in the case of ***Hashwani v Jivraj [2011] ICR 1004***. The headnote records that the jurisprudence of the European Court of Justice draws a clear distinction between those who were in substance employed and those who were independent providers of services not in a relationship of subordination with the person who received the services. That is the guidance that I need to apply. I note that the Supreme Court examined both the relevant European Directive 2000/78, domestic authorities and the jurisprudence of the European Court of Justice.

12. In domestic terms, the Supreme Court approved the judgment of Balcombe LJ in the case of **Gunning [1986] ICR 145** in which he said that the dominant purpose test is really an attempt to identify the essential nature of the contract. He went on that an alternative way of putting it may be to say that the courts are seeking to discover whether the obligation for personal service is the dominant feature of the contractual arrangement or not. If it is, then the contract lies in the employment fields. If it is not, for example the dominant feature of the contract is a particular outcome or objective and the obligation to provide personal service is an incidental or secondary consideration, it will lie in the business field.
13. In my view, the dominant purpose of the contract between the parties was the provision of an economic impact assessment. The fact that it was to be carried out by Ms Sadriyeva was not the dominant purpose. Thus, having regard to the findings of fact that I have set out above, on balance I am of the view that the arrangement between the parties here was an arrangement between businesses and thus Ms Sadriyeva is not entitled to the protection of the Equality Act because she does not come within the ambit of section 83(2)(a).
14. It follows therefore that the tribunal does not have jurisdiction to hear her claims.

Employment Judge Blackwell
Date 18th December 2018

JUDGMENT SENT TO THE PARTIES ON

.....
.....

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments 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.