



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MORTON

BETWEEN:

Mr S Quinn

Claimant

AND

The Galley (Seaford) Limited

Respondent

ON: 7 January 2019

Appearances:

For the Claimant: In person

For the Respondent: Mr G Khan (Solicitor)

JUDGMENT

1. The Claimant was a volunteer and neither a worker nor an employee of the Respondent.
2. He was not therefore employed under a contract to do work and had no entitlement to remuneration.
3. His claim for breach of contract and/or a payment of wages therefore fails and is dismissed.

Reasons

1. Although neither of the parties requested written reasons I am supplying a written account of my reasons for my decision to ensure that Mr Quinn understands why his claim was unsuccessful. The listed hearing was very short (one hour) and the start was delayed as a result of Mr Quinn not being

- able to locate the tribunal building. Although the hearing ran over its allotted time I gave my oral decision at some speed after hearing Mr Quinn's evidence, reading his witness statement and reading a small bundle of documents consisting of 68 pages. Any references to page numbers in these reasons are references to page numbers in that bundle.
2. This was a claim for a sum of money brought by Mr Quinn after a period of time spent working for no remuneration for the Respondent. The primary legal issue in the case was whether he had a relationship with the Respondent as worker or employee that entitled him to remuneration or whether he undertook work for the Respondent in a voluntary capacity. If I were to have decided that he was a worker or an employee I would have had to go on to consider the terms of the contract and the amount of remuneration to which he was entitled. In the event that was unnecessary.
 3. The claim arose from Mr Quinn's membership of Newhaven and Seaford Sailing Club (the "Club") of which the Respondent, a café and bar, is a wholly owned subsidiary. He had been involved with the Club for approximately four years at the time of the events that gave rise to the claim. He had a paid role with the Club as a cleaner at its Piddinghoe site and was paid via the Respondent. The Respondent was ordinarily franchised out but the Club decided to try running it itself, but was finding it difficult to do this successfully. Mr Quinn had a considerable amount of hospitality experience and offered to help out, with the assistance of his partner. Initially on 8 May (page 31) he offered to work for "no more pay than a general operative" but then on 10 May said in an email headed "Proposal" (page 32) that "Having given my original proposal more thought and having listened to the financial restraints placed upon TGSL, I have decided that I would be happy to work in a voluntary role for the foreseeable future, perhaps until we have steadied the ship and the financial situation looks rosier. Then perhaps the board will have a clearer picture of how they wish to proceed". The Respondent's board was considering a number of options at the time, including putting the café out to franchise again. The board's understanding of the situation on 1 May was set out in an email from Richard Beal to other board members (page 34) explaining what had been discussed with Mr Quinn. The relevant points are that "The period will be three months, probably from Monday 21 May, reviewed monthly... Steve will get reasonable expenses (principally petrol)... He will not necessarily get any franchise that might be offered".
 4. I find as a fact that the arrangement between the parties at the outset was clear: Mr Quinn would work as a volunteer for no remuneration. He clearly agreed that in writing and he also acknowledged it in his oral evidence at the hearing. I also find as a fact that directors at the Respondent (be they Companies Act directors or otherwise) would regularly provide their services to the Respondent in a voluntary capacity in the interests of the Club.
 5. The Claimant was acting commendably and from a genuine wish to try to rescue the situation. It was clear also from his evidence that once he started running the café he found the situation different from what he had expected and he had to work much harder than he had anticipated due to staff

- shortages, sickness absences and unanticipated resignations. But despite realising that he was having to work many more hours than he had planned he felt a moral obligation to continue – he was acting out of concern for the other employees and did not want to walk away and leave people in the lurch. However he accepted in his evidence that whilst he may have felt under a moral obligation to carry on working in the Club, he had not been under any legal obligation to do so.
6. At a board meeting on 12 June, some three weeks into Mr Quinn's role, it was acknowledged by his fellow directors that in light of the workload he perhaps ought to be paid and he was asked to make a proposal. Mr Quinn's case was that he made a verbal proposal that he be paid at ten pounds per hour for 40 hours per week and that that was agreed at the meeting. He made that assertion in reliance in part on conversations he said he had with Ian Johnson. However Mr Johnson was not called to give evidence and there were no documents confirming what Mr Johnson said. The contemporaneous documents do not support Mr Quinn's version of events. They show that the Respondent was still considering a range of options at that stage, including paying Mr Quinn to carry on with the role and putting the running of the clubhouse out to franchise.
 7. The Claimant also said in his evidence that at the meeting "it was proposed by Terry Jones that I could not carry on as I was. When they asked me to make a proposal about being paid I said 10 per hour for 40 hours per week. Terry Jones said that seems fair and everyone else nodded and seemed to agree". I find as a fact that the Respondent had no settled intention at that meeting to start paying Mr Quinn and but was simply exploring the possibility. All that was agreed at the meeting on 12 June was that consideration ought to be given to paying Mr Quinn something, and that there were comments to the effect that that 10 per hour for 40 hours per week seemed a reasonable proposal which he was asked to put forward formally. Mr Quinn did not prove on a balance of probabilities that a firm agreement was reached on 12 June that he would be paid that amount either in the future or retrospectively. The position that I find was reached is recorded in the confidential addendum to the minutes of the meeting set out at page 43, which were circulated to Mr Quinn amongst others on 19 June. Although Mr Quinn said in his evidence that he did not have time to read them, he wrote an email on 20 June saying, "As there still seems to be uncertainty as to whether I will be paid for the hours I work, it's obvious that I cannot carry on in the manner that I have....", thus acknowledging that by 20 June there was still no firm agreement that he was going to be paid.
 8. He put forward his proposal on the same day in a meeting with Richard Beale. Page 51 set out the outline of the proposal. Also on the same day Noel West sent out an email canvassing opinion about it among the other directors. On 21 June Mr West asked to meet with Mr Quinn to discuss the proposal pending the response of the other directors but Mr Quinn refused to meet with him (page 53). He said, in a message that was exasperated in tone: "Pay me, pay someone else, or close". That email and the one that followed (page 54) show that at the time Mr Quinn was aware that he was still being expected to

work without pay. On page 54 he says, "I also understand that I made a proposal to work for the club for no pay and I was and am honouring that at great personal cost. What was not expected was that three members of staff would leave and two go sick, thus leaving many hours uncovered. I was left with the choice of closing or working these hours myself, so I have worked long hours to keep the club open. With the hours saved from the absent staff totalling more than 100 hours a week, and myself covering most of them, I did not think that asking to be paid some of them was unreasonable."

9. This did seem to me to be a reasonable argument on Mr Quinn's part. Nevertheless the set of circumstances prevailing on 21 June when he sent the email is inconsistent with an agreement having been reached on 12 June for him to be given an immediate contract that entitled him to remuneration. When a counter proposal was made on 22 June to offer him expenses of thirty pounds per day (page 56) he refused it and ceased offering his services on a voluntary basis with immediate effect.
10. I therefore find as a fact that there was no agreed variation of the voluntary arrangement on 12 June. A contract involving limited remuneration in the form of daily expenses was offered but refused on 22 June. Had Mr Quinn decided to accept rather than refuse it the new arrangement would have had limited retrospective effect (the email from Mr West to Mr Quinn made it clear that it would have been backdated to 13 June), but he chose instead to cease providing services to the Respondent altogether. The variation, had Mr Quinn accepted it, would have had the effect of changing the nature of the arrangement from one that was purely voluntary to one that involved consideration, thereby potentially conferring some rights on Mr Quinn. But no such agreement ever took effect.
11. I conclude from these facts that there is no basis for Mr Quinn's claim for payment for the period 21 May 2018 to 22 June 2018. His claim is therefore dismissed.

Employment Judge Morton
Date: 7 January 2019