



EMPLOYMENT TRIBUNALS

Claimant: Mr P Harnwell

Respondent: Keltbray Ltd

Heard at: London South Employment Tribunal

On: 25 March 2019

Before: Employment Judge Martin

Representation

Claimant: Ms J May - Solicitor

Respondent: Mr M Palmer - Counsel

Oral reasons were given at the end of the hearing.

Judgment having been sent to the parties on 5 April 10`9 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 by both the Claimant and the Respondent, the following reasons are provided:

REASONS

1. This was a preliminary hearing to determine whether the Tribunal had jurisdiction to hear the Claimant's claim of disability discrimination. The issue was whether the Claimant was a contract worker as defined in s41 Equality Act 2010, which defines a contract worker as a person who a) makes work available for an individual who is employed by another person and b) supplied by that other person in furtherance of a contract to which the principal is a party whether or not that other person is a party to it.
2. Contract work is work available by a principal and a contract worker is an individual supplied to a principal in furtherance of a contract to which the principal is a party. There does not need to be a direct contractual relationship between the principal and the employer for the protection to apply merely an unbroken chain of contracts.

3. The key issue in this case was whether the Claimant was employed by another person pursuant to the statutory definition.
4. The Respondent has a contract with Number 8 which is a recruitment agency, and which operates on an introduction agency only. Number 8 use Shipshape as its payroll provider and has a written contract with them. Shipshape has the only written contract with the Claimant.
5. In the contract between Shipshape and the Claimant the Claimant is described as self-employed, there is a clause allowing the Claimant to substitute another worker who is suitable, and there is a clause expressly saying that there is no mutuality of obligations on the parties.
6. The Claimant worked on the Respondent's site and Shipshape had no day to day control over the Claimant's work for the Respondent.
7. The Claimant disputed the validity of the substitution clause, saying that it would not be possible to substitute anyone else and he never did this. There were times that the Claimant could not work, and the Respondent then asked Number 8 to provide a worker for the period the Claimant was off work. I am satisfied having heard from the Respondent that if the Claimant provided someone one else to work then provided that person could prove his or her entitlement to work in the UK and had the required qualification, then that person would be able to work for the Respondent in the Claimant's place.
8. When the Claimant went to Shipshape, he was required to answer questions about how he worked. Shipshape said that this was to see if the person would be taken on as self-employed or as an employee. Its evidence was that it did not matter to them on what basis a person was engaged, what mattered was getting the right categorisation for legal and tax reasons. The Claimant says he was coerced into signing the agreement with Shipshape in order to be paid for work done. I do not accept this, there was no evidence of coercion and Shipshape's evidence was that the Claimant could either have been self employed or an employee depending on the answers he gave to their questions. If he did not meet the requirements for self-employed status he would have been employed. These questions were asked several times during his engagement with Shipshape and in all responses, the Claimant repeated his answers and confirmed that he was self-employed.
9. The Claimant submitted his accounts and paid tax on the basis of being self-employed in his own name and not via a limited company.
10. The Claimant accepted he was not employed by the Respondent. He must therefore show that he was employed by another person in accordance with the statutory requirements.
11. The Tribunal does not find the necessary elements of employment to be there in relation to Shipshape. There was no mutuality of obligation as the Claimant did not have to accept work and Shipshape did not have to offer work. The requirement for personal service was tainted by the substitution clause which the Tribunal has found to be valid. Shipshape did not have the necessary

control of the Claimant's work with the Respondent so this element is not satisfied.

12. I accept that the Claimant exclusively worked at the Respondent's site for a long time. Notwithstanding this the terms of the agreement with Shipshape is clear and exclusive work at the Respondent's site does not override the other considerations. The mere existence of a long-term relationship does not indicate mutuality of obligation as the Respondent could simply tell Shipshape it did not need the Claimant any longer.
13. My conclusion in summary is that the Claimant has not been able to show an employment relationship with Shipshape. He is now not⁵ claiming to have been employed by the Respondent. I find that the provision of s41(5) are not satisfied and that the Tribunal does not have the jurisdiction to hear the Claimants claims of discrimination.

Employment Judge Anne Martin
Date: 09 April 2019