



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr F Brady

AND

Respondent
Cura Homecare Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth

ON

21 August 2019

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did not attend – written representations

For the Respondent: Did not attend – written representations

JUDGMENT

The judgment of the tribunal is that:

1 - The Claimant's claim is dismissed; and

2 - The hearing listed on 24 and 25 October 2019 is cancelled.

REASONS

1. This is the judgment following a preliminary hearing (which was heard by telephone but was a public hearing in open court) to determine whether the claimant's claim should be struck out on the grounds that it had already been compromised by a previous ACAS COT 3 Agreement, or alternatively should be struck out as having no reasonable prospect of success and/or as being an abuse of process.
2. In this case the claimant Mr Francis Brady has brought claims alleging unfair dismissal, and for unlawful deduction from wages. The unfair dismissal claim has already been dismissed because the claimant lacks sufficient continuity of service to bring that claim. The remaining unlawful deductions claim is resisted by the respondent.
3. Neither party attended by telephone as instructed. Neither party had notified the Tribunal of proposed non-attendance, neither had either party sought a postponement. I have considered the detailed previous correspondence, representations and submissions made by both parties and sent to this Tribunal. I make the following findings of fact based on these submissions, and following consideration of the relevant contemporaneous documents which were supplied by the parties following case management orders. I have

also considered a statement from Mr Taffurelli, the Head of Group Operations for Liquid Friday Ltd.

4. The background to this case has been set out in detail by Employment Judge Midgley in his case management summary dated 15 July 2019. In short, the claimant issued earlier proceedings against a different respondent, namely Liquid Friday Ltd, under Employment Tribunal reference number 1401219/2019 ("the First Proceedings"). The claim was for unfair dismissal, and for unlawful deduction from wages. The unfair dismissal claim was struck out on 26 April 2019 because the claimant lacked sufficient continuity of service to bring such a claim. On 1 May 2019 the claimant notified the Tribunal that he was withdrawing his remaining claim for unlawful deduction from wages because it had been settled through ACAS and an ACAS COT 3 Agreement had been completed. On 31 May 2019 the claimant's claim for unlawful deduction from wages was dismissed on withdrawal by the claimant. That was therefore the end of the First Proceedings.
5. In the meantime, on 23 April 2019 the claimant issued these current proceedings against this respondent Cura Homecare Ltd ("the Second Proceedings"). The claimant effectively replicated the two same claims, but against this different respondent Cura Homecare Ltd, and seeking to argue that the respondent in the First Proceedings (namely Liquid Friday Ltd) had only been acting as some form of payroll agent for this respondent, and that therefore this second respondent Cura Homecare Ltd was liable for his claims. At the case management preliminary hearing on 15 July 2019 the claimant accepted that he had insufficient continuity of service to pursue an unfair dismissal claim, and as noted above, that unfair dismissal claim has already been struck out. The question therefore arises whether his remaining claim under these Second Proceedings of unlawful deduction from wages should also be struck out. Employment Judge Midgley ordered that this should be determined at this preliminary hearing, either on the basis that the claimant's remaining claim has already been compromised by the ACAS COT 3 Agreement in the First Proceedings, or alternatively because these proceedings are an abuse of process.
6. I have seen the following contemporaneous documents:
7. In the first place, I have seen a signed statement from Mr Joe Taffurelli, the Head of Group Operations of Liquid Friday Ltd. This confirms that the claimant was employed by Liquid Friday Ltd from 24 April 2018 until 16 December 2018. The claimant was effectively an agency worker who was sent on multiple assignments for two different clients of Liquid Friday Ltd, the second of which more latterly was Cura Homecare Ltd, (the respondent in these Second Proceedings). Mr Taffurelli confirms that the claimant was not employed by any of their clients, but was employed by Liquid Friday Ltd to provide services to their clients on that company's behalf.
8. I have also seen two contracts between Liquid Friday Ltd and Cura Homecare Ltd, both dated 6 August 2017. These agreements record that Liquid Friday is a principal contractual intermediary of labour only supplies. These agreements record the terms upon which Liquid Friday assigned its employees to Cura Homecare Ltd, and also allowed Cura Homecare Ltd to re-assign these employees again to an ultimate different end-user.
9. Thirdly I have seen a contract of employment between the claimant Mr Brady and Liquid Friday Ltd which has been signed by both of these parties as employer and employee. The contract makes it clear that Liquid Friday Ltd employed the claimant as a Trackman on the basis that he would be assigned from time to time to perform services for third parties and other end users. I have also seen a pay information statement which makes it clear that Liquid Friday Ltd has made payments to the claimant as his employer, rather than those payments being made by a different third party or end user.
10. I have also seen a signed ACAS COT 3 Agreement dated 16 April 2019 which arose as a result of conciliation action during the First Proceedings. Under this signed agreement the claimant has accepted the sum of £2,000 "in full and final settlement of any and all claims arising out of the Prospective Claimant's employment or its termination thereof." That settlement sum has been paid to the claimant.
11. In conclusion, and as a result of all of the above, I find as follows. In the first place the claimant was only ever an employee of Liquid Friday Ltd during the relevant times, and was not an employee of Cura Homecare Ltd, the respondent to these Second Proceedings.

- Secondly, the surviving claim in these Second Proceedings for unlawful deduction from wages has already been compromised by the ACAS COT 3 Agreement under which the claimant accepted £2,000 in full and final settlement of all claims arising from his employment with Liquid Friday Ltd.
12. Having established the above facts, I now apply the law.
 13. Section 203 of the Employment Rights Act 1996 ("the Act") provides for restrictions on contracting out of Employment Tribunal claims. Under section 203(1) any provision in an agreement is void in so far as it purports to exclude or limit the operation of any provisions of the Act. However, under section 203(2)(e) this does not apply to any agreement to refrain from instituting or continuing proceedings where action has been taken by an ACAS conciliation officer.
 14. The Employment Tribunal Rules of Procedure 2013 are in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and are referred to in this judgment as "the Rules". Rule 37(1)(a) provides that at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on the grounds that it is scandalous, or vexatious, or has no reasonable prospect of success.
 15. I apply Rule 47, and I have proceeded in the absence of both parties who have failed to attend this hearing having considered all such information as was available to me.
 16. The claimant has one surviving claim in these Second Proceedings, namely for unlawful deduction from wages. Such a claim can only be brought against a claimant's relevant current or former employer. The claimant's employer at all relevant times was Liquid Friday Ltd. For this reason alone the claimant is not entitled to pursue his claim against the current respondent in these Second Proceedings namely Cura Homecare Limited, because this respondent was never his employer. His claim therefore has no reasonable prospect of success, and I therefore strike out the claimant's claim under Rule 37(1)(a) for this reason.
 17. In addition, the surviving claim for unlawful deduction from wages arises from the period when the claimant was an employee of Liquid Friday Ltd, and the claimant has already compromised this claim under the ACAS COT 3 Agreement. The agreement satisfies the conditions in section 203(2)(e) of the Act, and accordingly the claimant is precluded from pursuing any further claim in this respect. I also dismiss the claimant's claim for this reason.

Employment Judge N J Roper
Dated 21 August 2019

Judgment sent to Parties on