EMPLOYMENT TRIBUNALS

Claimant: Mr R Easton

First Respondent: Exact Education Limited

Second Respondent: Choice Contracting Services Limited (in liquidation)

JUDGMENT

The First Respondent's application for a reconsideration of the Judgment of 17 July 2019 is refused.

REASONS

1. Under Rule 70(1) of the Tribunal's Rules of Procedure, a party may apply for the Tribunal to reconsider any Judgment on the ground that it is necessary in the interests of justice for the Tribunal to do so. On 19 July 2019, the First Respondent applied for a reconsideration of the Judgment the Tribunal reached on 19 July 2019.

2. Under Rule 70(2) and (3), an Employment Judge (and, where practicable the one who chaired the full Tribunal that made the original decision) must consider the application. If she considers that there is no reasonable prospect of the original decision being varied or revoked, she must refuse the application.

3. The Employment Judge who chaired the Tribunal that made the original decision has considered the three grounds of the First Respondent's application and finds as follows.

Ground 1: The Tribunal applied the incorrect law and/or got the law wrong as to who the employer of the Claimant was

4.1 The Tribunal refused to take into consideration a written document from Choice in which it admitted it was the Claimant's employer. The Tribunal did consider that document, but did not give it any weight for the reasons set out paragraphs 38 and 39 of the written Reasons sent to the parties.

4.2 The fact that the Tribunal took into account in considering Wise Move's concession that it was the Claimant's employer that Wise Move and, presumably Choice, were paid for their services "demonstrates a disregard to contractual relationships". The Tribunal noted the contractual arrangement between the First Respondent and Wise Move, but concluded that it did not affect the nature of the relationship between the First Respondent and the Claimant.

4.3 The Tribunal refused to take into account the fact that Choice had offered the Claimant a goodwill compensation payment that had been refused. The Tribunal noted that this offer had been made but did not consider it affected the nature of the relationship between the First Respondent and the Claimant.

4.4 The Tribunal did not take into account the fact that the Claimant had executed a signed contract with Wise Move/Choice. The Tribunal did take into account the existence of a written document headed "contract of employment" which Choice sent to the Claimant, but concluded, for the reasons set out in paragraphs 24 and 25 of the written Reasons, that he did not in fact sign this document.

4.5 The Claimant was paid by Choice throughout and received no pay slips from the First Respondent and that the First Respondent had no knowledge of what the Claimant was being paid. The Tribunal accepted that the Claimant's pay slips were issued by Choice. It did not accept that this made Choice the Claimant's employer. It was consistent with Choice being the payroll administrator. The Tribunal considers that the First Respondent did know what the Claimant was being paid: it was agreed between them.

4.6 The decision has "grave implications for the many Umbrella Companies who legitimately operate as employers to agency workers in the UK". As the Tribunal explained at the Hearing, its decision was based on the particular facts and circumstances of the Claimant's case and cannot be viewed as any form of precedent for the case of any other agency worker, whether employed by or through Exact or any other company.

4.7 The First Respondent was "branded" as a small company who had to use a payroll company. The size of the First Respondent was irrelevant to why it chose to use an Umbrella Company and as to whether it was the Claimant's employer. The Tribunal did not consider the size of the First Respondent to be a relevant factor when assessing the nature of the relationship between the First Respondent and the Claimant. Mr Shanks explained in evidence that Exact does not have the in-house resources to administer the payroll for all the agency workers with whom it works.

Ground 2: The First Respondent was used as a scapegoat and unfairly treated in the tribunal process and the judge was unfairly biased

5.1 Choice refused to engage in the Tribunal process after writing to confirm they were the Claimant's employer. The Tribunal can do no more than comment that that is a matter for Choice.

5.2 As Choice did not attend on the day the judge was unfairly biased in refusing their written submission. The Tribunal did consider Mr Vause's letter about Choice's position, but for the reasons set out in paragraphs 38 and 39 of the Reasons, did not consider it a significant factor.

5.3 Choice has gone into liquidation since the case started and the First Respondent was the scapegoat. Wise Move and Rotherham College were removed at the Preliminary Hearing. This should not have happened as they both meet more of the common law tests and case law criteria to be the Claimant's employer than the First Respondent. As they were not at the main Hearing, the First Respondent was unfairly judged. If the First Respondent wished to challenge the removal of Wise Move and RNN as Respondents, it had the opportunity to do so at the Preliminary Hearing or by way of appeal against the Judgment dismissing those claims on withdrawal by the Claimant.

5.4 The First Respondent was the scapegoat as the Judge at the Preliminary Hearing said it would be difficult for the Claimant to pursue a case against Choice, as a company in liquidation. The Employment Judge cannot comment on what may have been said at the Preliminary Hearing. In any event, the Claimant decided to pursue his claim against Choice.

Ground 3: There was no evidence to support the Judge's decision and the Judge disregarded pertinent evidence without explanation.

6.1 There is no signed contract between the Claimant and the First Respondent but there is a signed contract between the Claimant and Wise Move/Choice. The findings the Tribunal made on the existence of signed contracts, and the evidence upon which it based those findings, are set out at paragraphs 19, 20, 24 and 25 of the written Reasons.

6.2 The First Respondent provided no payments or payslips to the Claimant. Choice paid the Claimant throughout the assignment. The Tribunal accepted these facts but considered that they were consistent with Choice being the payroll administrator.

6.3 Choice has admitted it was the Claimant's employer and written evidence has been disregarded. These points have been addressed in paragraphs 4.1 and 4.4 above.

6.4 The Claimant acknowledged that he received all payments from Wise Move/Choice. The Tribunal accepted that this was the case but did not consider it made Wise Move or Choice the Claimant's employer. It was consistent with Choice being the payroll administrator.

6.5 The Judge did not take into account the fact that the Claimant's "vastly inflated" hourly rate when compared with the equivalent lecturer's salary at the Colleges meant it "must have included holiday pay". The Tribunal found that no mention was made by the First Respondent of the Claimant's agreed hourly rate being inclusive of holiday pay. The Tribunal does not accept that the mere fact that the Claimant's pay rate was higher than that paid to lecturers employed by RNN makes it necessary to imply that the Claimant's hourly rate included an element of holiday pay. There could have been many other reasons for the difference, including, for example, that the Claimant would not receive any occupational pension benefits or occupational sick pay to which the lecturers were entitled. It would have been open to the First Respondent to agree with Mr Easton that an element of his hourly rate was attributable to holiday pay, but there was no evidence before the Tribunal that it did so.

General points and conclusion

7. The First Respondent's application makes repeated reference to "the judge". The Employment Judge confirms that the decision on the claim was made by a full Tribunal, which was unanimous in all its findings of fact and law.

8. The application also repeatedly refers to the Judge being "biased". This allegation appears to be based on the First Respondent's belief that the Tribunal's decision was wrong. Far from being biased against the First Respondent, the Tribunal in fact gave both parties substantial assistance during the course of the Hearing in presenting their oral and documentary evidence.

9. In summary, the Employment Judge can identify no basis on which it is necessary in the interests of justice for the Judgment to be reconsidered. As she considers that there is no reasonable prospect of the original decision being varied or revoked, the application for reconsideration is refused.

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Employment Judge Cox

Date: 21 August 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE