



EMPLOYMENT TRIBUNALS

Claimant: Mr Bradley Rainford

Respondent: Dorset Aquatics Limited

Heard at: Bristol **On:** 13th January 2020

Before: Employment Judge O'Rourke

Representation

Claimant: Mr Whitehouse – Solicitor

Respondent: Mr Duffy – Counsel

PRELIMINARY HEARING RESERVED JUDGMENT

The Claimant was neither an employee, nor a 'worker' of the Respondent and the Tribunal therefore, not having jurisdiction to hear his claims of unfair dismissal, breach of contract in respect of notice pay, unlawful deduction from wages and arrears of holiday pay, they are dismissed.

REASONS

Background and Issues

1. The Claimant and his brother, Benjamin Rainford ('Ben'), were co-directors and shareholders in the Respondent Company, which, at the relevant time, carried out both landscaping and provided aquatic services (such as ponds, fountains, water features etc.). The Company had previously been in their father's sole ownership and was then shared 50/50 with Ben, with him becoming a director in 2012. On their father's retirement, in mid-2013, the Claimant ('Bradley') entered more formally into the business (having done some ad-hoc work before), becoming a director and being subsequently, in mid-2015, granted a 40%

shareholding, with Ben holding the balance. Ben held the majority shareholding because he had loaned the Company money.

2. A dispute arose between them in June 2018, which resulted in Bradley subsequently bringing claims of constructive unfair dismissal, breach of contract in respect of pay in lieu of notice, unlawful deductions from wages and arrears of holiday pay. The wages claim was brought on 9 October 2018 and the others on 17 January 2019.
3. The matter came to a telephone case management hearing on 24 May 2019, before Employment Judge Roper, who listed this preliminary hearing in person, to determine preliminary issues.
4. Those issues are:
 - a. Was the Claimant ever an employee, or alternatively, a worker of the Respondent; and
 - b. If so, what was the date when that relationship terminated; and
 - c. Only if the Claimant was an employee, whether his claims of unfair dismissal, breach of contract, unlawful deduction from wages and accrued holiday pay claims were presented in time and if not, whether it was not reasonably practicable to have done so and whether the claims were then presented within such further time as was reasonable; or
 - d. In the event that the Claimant was not an employee, but was a worker, whether his remaining unlawful deduction from wages and accrued holiday pay claims were presented in time (applying the same statutory test as above)?

The Law

5. Section 230(1) to (3) of the Employment Rights Act 1996 states:
 - (1) In this Act “employee” means an individual who has entered into or works under a contract of employment.
 - (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
 - (3) In this Act “worker” ... means an individual who has entered into or works under -
 - a. a contract of employment, or

- b. any other contract, whether express or implied and (if it express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual
and any reference to a worker's contract shall be construed accordingly.
6. Mr Whitehouse referred me to the case of Tallon v Manchester TEC Ltd [1996] UKEAT 210_95_1801, which, in broad terms, indicated that any ambiguities in contractual or notice documentation should be construed against the employer (the well-known contra proferentem rule). Further, it stated that correspondence relating to terms and conditions of employment must not be construed in a technical way, but rather as they would be understood by an ordinary reasonable employee.
7. I further note the following well-established cases in relation to employment status:
 - a. Ready-Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433, which set out the following three-stage test:
 - i. Did the worker undertake to provide his own work and skill in return for remuneration?
 - ii. Was there a sufficient degree of control for the relationship to be one of 'master and servant'? McKenna J further added on this point:

An obligation to do work subject to the other party's control is a necessary, though not always a sufficient, condition of a contract of service. If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract, and the person doing the work will not be a servant. The judge's job is to classify the contract... He may, in performing it, take into account other matters beside control.
 - iii. Were the other provisions of the contract consistent with it being a contract of service?
 - b. Quashie v Stringfellow Restaurants Ltd [2012] IRLR 99 EWCA, at Paragraph 52, on the question of the intentions of the parties: The employment tribunal's conclusion was strongly reinforced by the fact that the terms of the contract involved the dancer accepting that she was self-employed, and she conducted her affairs on that basis, paying her own tax. In addition, and again consistently with that classification, she did not receive sick pay or holiday pay. It is trite law that the parties cannot by agreement fix the status of their relationship; that is an objective matter to be determined by an

assessment of all the relevant facts. But it is legitimate for a court to have regard to the way in which the parties have chosen to categorise the relationship, and in a case where the position is uncertain, it can be decisive....

The Facts

8. I heard evidence from both brothers.
9. Bradley's Evidence. Bradley, in summary, gave the following evidence:
 - a. He was employed as a site manager and was also responsible for marketing of the Company and maintaining its website and social media profile. He agreed, in cross-examination that it was his choice to take on these functions as 'it was a small company and nobody else could do it.' He also agreed that he 'took on a lot of (his father's) duties' when he became a director and that prior to assuming that directorial role, when he'd done 'odd jobs'/ad-hoc work, he had done so for the Company, with his father as his 'boss'. Further, he agreed that he and Ben decided the split of work between them and that he could decide on his own hours of work. On rainy days, the labourers (referred to by him as 'employees') would not generally work (unless there was 'dry' work for them to do), on his and Ben's instruction, on the understanding that that loss of work (and pay) would be made up at a later point. He and Ben however would, on such days, work from the office.
 - b. The Company normally had 'between two and four employees to help us and to make sure we could pay the bills at the end of the month, both Ben and I only took a small salary, which we paid ourselves at the end of the month.'
 - c. He considered his status to be that of 'employee, Statutory Director and minority shareholder'. It was common evidence that there was no documentation, whatsoever, setting out any terms and conditions of employment, or a director's service agreement. None of the labourers had statements of terms and conditions of employment, except perhaps one, who had requested such, as some point in the past.
 - d. Due to personal differences between him and his brother, he 'decided to write to Ben to let him know that I wanted to leave.' (There are several references in his statement to events occurring in 2019, not 2018 and these are obviously in error.) He wrote to

him (copied to their mother, who was also involved in the business), on or about 30 June 2018 (neither witness was sure of the date of the letter [50-52], as it's undated, but agreed that it was received at around this time). In summary, it stated the following:

- i. He had 'decided to take a step away from Dorset Aquatics'. He denied, in cross-examination that this phrase conveyed the same intent as his father had had, when he retired from the Company, or that it meant that he would be 'leaving' the Company.
- ii. In contrast to the situation he then found himself in, he stated that 'In the early days we seemed to work together. Had the same ideas, walking around grassroots with ideas and aspirations ... I thought my (our) futures were set out.'
- iii. 'The fact that you were on board before me and you lent the business money will always be a sticking point.'
- iv. He had brought in the same level of income to the Company as Ben had. 'Yet, in my personal opinion, I feel like an employee, with equal, if not less respect given to me as given to any other member of staff. My 'input' to the Company is that of a director, with all the benefits of a labourer.' He was challenged, in cross-examination, as to why, if he was now asserting that he had been an employee all along, he would have said 'I feel like an employee', but instead asserts his position as a director and wishing not to be treated as an employee. He said that to him, 'employee' meant 'labourer' and he was treated merely as a site manager (so, not as a labourer). It was suggested to him that by stating that he could work elsewhere, for good money 'with none of the hassle, the weekends, the emails, quotes, invoicing.', it indicated that he was not in fact treated as an employee and he was seeking to avoid the normal directorial responsibilities. He disagreed.
- v. He then went on to propose four options as to 'how we go forward'. These included buying each other out; Dorset Aquatics Ltd becoming the parent company of two new subsidiary companies, with each run independently, sharing the assets of the parent company; Bradley sets up his own company, while retaining shares in the Respondent Company and finally, to 'fold up the lot', splitting the sale value and going 'our separate ways'. He agreed, in cross-examination that in none of those options did he suggest simply continuing to work for the Company, as an employee.

- e. On the next day (both parties considered it likely to be 1 July 2018 – all dates hereafter, unless otherwise stated, are in 2018), Bradley arrived at the yard and during an angry discussion with Ben, was told to hand over his tools, which he did. The vehicle he normally used was in for repairs and he could not get access to a replacement. He decided to go home and to await developments, giving 'Ben a chance to calm down'. He said, in cross-examination that he had brought tools with him into the Company, which had been replaced over the years. Vehicles and plant and other heavy equipment belonged to the Company.
- f. On 6 July, he received a letter from the Company's solicitors [54-57].

It pointed out that he had incorporated a new company, 'Dorset Ponds and Lakes Ltd' on 28 June (which he had, although he said that it had never traded). Two employees who had worked in his team, had resigned on 2 July, it was presumed to work for him/his new company. It was considered that in doing so, he was in breach of his fiduciary duties as a director and the letter threatened legal proceedings to recover any consequent damages. He was instructed to return all property belonging to the Company and refrain from contacting the Company's clients. He was also instructed to reinstate Ben's access to the Company's bank account(s) and to revoke his own access (he accepted, in cross examination that he had, as a joint signatory on the bank account, 'frozen' the bank account(s), because, he said, he 'felt it necessary to take control'.)
- g. During this period, he had no vehicle to get to work and even if he could get there, had no keys for access, or the tools he needed.
- h. During their time as co-directors, they both 'regularly did jobs outside of the Company', with Ben doing weekend work for holiday money and sometimes Bradley would do work for his partner, who ran a hair salon. This 'was never an issue'.
- i. He decided to instruct solicitors himself and they wrote to the Company's solicitors on 9 July [59-60]. That letter stated that while Bradley had stated 'his intention to leave his position as director', he 'remains an employee of the Company'. They referred to Bradley having filed a form resigning his directorship with Companies House that day [66]. It denied any breach of fiduciary duties by him and invited settlement, on the basis of the proposals in his letter of 30 June.

- j. Prior to these events, before the relationship broke down, it was agreed evidence that Bradley and his team worked predominantly on a single and long-running landscaping project at Newlands Manor House, for a Mr and Mrs Sellers. On 23 July, he was called to the House, by the house-sitter, because, it was stated, Ben 'was causing a disturbance' there. A dispute had arisen because Ben was attempting to remove machinery from the site. The police were called and there was subsequent correspondence from the Sellers' solicitors to Ben. Bradley agreed, in cross-examination that he had carried out work at Newlands Manor, through his partner's company 'Pure Hair Limited', invoicing the Sellers for work done in July, September and October, in the sum of approximately £50,000 [invoices 121-123].
- k. Bradley's solicitors wrote to the Company's solicitors on 26 July [78-80] stating that 'to help clarify matters we can confirm that our client is currently employed by Dorset Aquatics Ltd ... as a Director and that he commenced employment on 18 May 2013 ... and was until 24 July 2018 a Statutory Director of the Company.' It pointed out that without a vehicle and tools he was unable to 'carry out his normal duties or attend his place of work'. It considered therefore that he had been on 'paid leave' since 1 July and remained so. It asked that it be confirmed when he would be provided with a replacement vehicle to permit him to return to work and that he would not lose any pay during such period of leave.
- l. Bradley was not paid for July (both directors received gross monthly salaries of £1500 – [payroll details 111C]). He agreed, in cross-examination that while he 'didn't dictate his salary', he and Ben set the salary level and that when it was increased, over time, he was involved in the decision-making process and that any increase was 'based on how much the Company could afford.' When his solicitors disputed this non-payment, the Company's solicitors responded on 21 August [83], stating 'Your client chose to absent himself from work, without permission/approval to do so, from 30 June 2018. His absence is therefore unauthorised. Accordingly, he has no entitlement (sic) to payment of salary for (the) period of his unauthorised absence.' Bradley's solicitors responded on 24 August [86], asserting that that letter led them to 'note in particular your confirmation that our client remains an employee of the Company and retains all the rights and privileges of an employee.' It threatened Tribunal proceedings for unlawful deduction from wages (and which were submitted on 9 October 2018 [1-16]).
- m. On receipt of the Response to that claim, on or around 29 November [32-37], denying that he had ever been an employee or worker of the Company and asserting that he had resigned on 30 June,

Bradley considered that this constituted a breach of the implied term of trust and confidence and resigned, with immediate effect, on 30 November [94-95]. He then, as a consequence, brought the balance of his claims, to include constructive unfair dismissal, on 17 January 2019 [17-31]. It was suggested to him that by this point, having had legal advice, he was now seeking belatedly to rely on the implied term of trust and confidence, as an employee, when in his previous letter, he was complaining that he was being treated 'like' an employee. He denied this and said that it was because he was an employee and that it came as a shock to him to be told that he wasn't.

- n. In examination in chief, he was referred to a P45, in his name, dated 30 July and showing a 'leaving date' of 5 July [111I] and said that he had not seen that document prior to these proceedings.
- o. In cross-examination, he agreed that both he and Ben received dividends, as well as salary.

10. Ben's Evidence. Ben, in summary, gave the following evidence (focussing on those areas additional to, or in dispute with his brother's evidence):

- a. Following his brother's appointment as a shareholder, they agreed to receive the same fixed monthly payments and that any surplus monies would be reinvested into the Company. They both received this fixed amount, regardless of how many hours they worked. Wage slips were issued [111F] (although Ben could not recall ever receiving one), they paid PAYE and National Insurance and received P60s and Bradley was issued with a P45, all of which was arranged by the Company's accountant. Ben agreed that they were both described on the Payment Summary History [111B] as 'employees'. At the end of the year, they would take a dividend, split 60/40, once any necessary expenditure and reinvestment had been met.
- b. It was agreed that they could both work outside the Company, if they wished, although Ben said that he did little of such work. He was aware that Bradley worked sometimes with his partner, in or for her salon and it was not a problem for him, as it was in his private time.
- c. He had no 'control' over his brother's work. He could start and finish work when he pleased and take holiday when he wanted, without seeking permission. He did, however, expect his brother to turn up for work, as 'there was money to be made' and had no criticism of his past performance, in this respect. He was asked if his brother

could have sent a substitute to do his work and he said that 'he could do, although I wouldn't want it be regular, but it had never arisen.' As to holiday, for operational reasons, they simply agreed 'cover' between themselves, to ensure continuing running of the business, coordinating it on a wall calendar. He said in cross-examination that the teams they each managed sometimes interchanged individuals, which they (the brothers) organised between themselves and it was rare for him and his brother to work together on the same job.

- d. When he received his brother's letter of 30 June, he had little time to consider it, due to his forthcoming wedding. Nor did he discuss it with him in any detail when Bradley came to the yard on 2 July. He accused Bradley of 'lies' in alleging that he (Ben) had demanded that he hand over his tools and vehicle. He said his only concern was machinery and he was content for Bradley to keep his own tools, as he didn't wish to stop him working. He discovered his brother's registration of the new company that same day and two of their employees resigned the next day. A remaining employee told Ben, on 4 July that he had been approached by Bradley, to work on the Sellers' site. The work Bradley did on that site was with the use of Company equipment. The Company subsequently lost the Sellers' contract. Ben said that it was Bradley's 'job' and 'he went to work for them and I didn't want to stop him working'.
- e. As well as freezing the Company's bank account(s), Bradley also took over the website, email accounts and Facebook page, denying Ben access.
- f. Ben considered that from July-onwards, based on the 'Pure Hair' invoices and pictures taken on site [100-110], Bradley was now working on his own account and 'had no intention of furthering the business of the Respondent company', which is why he did no work for it. Bradley also sold tools belonging to the Company [Facebook entries 96-99]. He was in no doubt, from the wording of the 30 June letter ('stepping away') and despite Bradley saying in an email of 6 July [61] that he 'was still employed by the Company' that his brother had resigned and that it 'depended on how one looked at it'. He admitted, however, to being confused over the issue, but viewed Bradley's subsequent actions as confirming the matter. He said that since this events, he 'has had a wake-up call and learnt a lot eighteen months later.'
- g. If (which Ben denies) it is found that his brother was either an employee or worker of the Company, then he resigned on 29 or 30 June, or by the very latest, 9 July, when he resigned his directorship. In that same event, had he not resigned, he would have been

dismissed, in any event, for gross misconduct. He said in cross examination that Bradley was not paid because he didn't attend for work, wasn't invoicing clients and therefore there was no money coming in. However, as he had access to the bank account, he could have paid himself his own wages, if he wished. Ben himself did not receive wages over that period and he'd had to pay the employees late.

- h. Ben considered himself self-employed and which is what his mortgage company considers his status to be. He was challenged as to why he and Bradley are described as 'landscaper/landscape gardener' in Companies House documentation [113], when their father, in his time, was described as 'self-employed' [119] and said he didn't know.

Closing Submissions

11. On behalf of the Claimant, Mr Whitehouse made the following submissions:
 - a. All of the evidence indicates that the Claimant was an employee, from May 2013, under a contract of service.
 - b. The payroll, pay slips and payment of PAYE and NI shows that he was being paid as such. He needed to agree his leave.
 - c. He considered himself to be an employee. He was provided with tools and a vehicle and managed a team. He was under the control of the Company, but it is to be expected that he would have a higher degree of authority than the labourers.
 - d. Being co-signatory of the bank account indicated his integration into the Company.
 - e. The fact of being paid on rainy days, even if there was no work, was a distinction between managers and labourers.
 - f. Despite there having been twelve letters between the parties (to include the Claimant's personal email of 6 July), there has been no indication in them of the Claimant being anything other than an employee and which was never disputed by the Respondent. The Company's solicitors' letter of 21 August is entitled to be read at face value, having been professionally drafted. The first indication of any other position was in the Response to the first claim. He was entitled to treat that Response as a fundamental breach of contract and resign.

- g. 'If it walks like a duck and quacks like a duck' etc..
- h. His letter of 30 June cannot be treated as a letter of resignation and Ben accepts that he is confused on this point. It merely made proposals for future possibilities.
- i. Reliant on Tallon, unambiguous notice is required by the Respondent of its intentions and in the absence of such, the benefit of the doubt should be given to the Claimant.

12. On behalf of the Respondent, Mr Duffy made the following submissions:

- a. In respect of the P45 and the National Insurance documentation, neither witness has ever seen these documents prior to these proceedings. They were prepared by the Company's accountant and are not reflective of the true relationship between the parties.
- b. The Directors' salaries were set by both parties and dependent on the level of profit of the Company. The payment of dividends is inconsistent with employment status.
- c. There is a complete absence of any contractual documentation.
- d. The context of the previous set up needs to be taken into account. The witnesses' father was 'self-employed' and the two brothers took over that role.
- e. The Claimant had complete control over his day-to-day activities, with his brother/the Company having no control over the conduct of the Sellers' contract.
- f. The fact that the Respondent did not write to assert the Claimant's true status, in response to his solicitor's correspondence, is consistent, as it/Ben did not consider him to be an employee and was content for Bradley 'to do his own thing'.
- g. The Claimant's access to and decision to freeze the Company bank account is inconsistent with employee status.
- h. While it never arose, the Respondent/Ben had no problem with the Claimant substituting another to do his work, his hours of work were flexible and he could work for others 'on the side'.
- i. It's necessary to examine the parties' intentions at the time. On 30 June, the Claimant said 'I feel like an employee'. Why would he say that if he was in fact an employee? His claim to be one is only

mentioned later. He considered himself, at that point, to be much more than just an employee.

- j. In respect of the possibility of being a worker, s230(3)(b) rules that out, as his services are via a business operated by him.
 - k. If it is considered that he was an employee, his date of termination was 30 June and therefore the claim related to that status is out of time.
13. Conclusions on Evidence. There is, in fact, very little relevant evidence that is in fundamental dispute, but in respect of which, even if only by way of clarification, I find as follows:
- a. This was a family-initiated and until Bradley left it, family-run business. It had all the characteristics of such businesses, to include lack of contractual documentation and paperwork, over-dependence on personal relationships and with attendant risks of disagreements (apparent also with Mr Rainford senior's earlier departure from the business).
 - b. The brothers' PAYE/NIC status seems to have simply been on the advice of their accountant, no doubt for tax purposes (they paid very little – Bradley paying only £3000, out of earnings of £67,000 in a four-year period [111B]) and it also maintained their NI 'stamp', towards state pension etc. They jointly set the level of these earnings, based on profit levels. The production, by the accountant, of P60s and in Bradley's respect, of a P45 can be seen in the same light.
 - c. There was a clear distinction between the brothers' status and that of the 'employees/labourers', who were purely PAYE employees (with the exception of a small Christmas bonus), did have had fixed hours of work, no say in their level of pay and were not paid on 'rained-off' days. Bradley's status underwent a major change, on becoming a director and subsequently shareholder, as compared to the ad-hoc work he had done before, stepping, as he did, into his father's shoes, becoming the 'boss' his father had previously been.
 - d. He had considerable 'control' over his day-to-day working life. He chose his hours of work; he, in agreement with his brother, set his pay and decided what dividend payment was appropriate; the Respondent/Ben exercised no control over how he carried out the Seller contract (particularly as evidenced by Ben's subsequent 'surrender' of that contract) and he took holidays when he wished, with only the practical proviso being that he co-ordinate with Ben.

- e. Bradley's letter of 30 June was an ultimatum that he wished to be no longer directly involved in the business and while it is expressed in the future tense, it is clear from his subsequent prompt actions, in resigning as a director, working in his own right at the Sellers' site and sabotaging the Company's bank account (to 'take control') and website etc. that, as far as he was concerned, he wanted nothing more to do with the Company (apart from his 40% shareholding and its disposal, in due course). I did not believe his evidence that he was apparently willing to return to work for the Company, as an 'employee', but was only prevented from doing so by retention of his tools. This was clearly an after-the-event fabrication on his part, when viewed against his actual behaviour, as set out above. Nor do I view, as Mr Whitehouse asserts, the Company's solicitors' letter of 21 August to be 'confirmation that our client remains an employee of the Company and retains all the rights and privileges of an employee'. While it may have carelessly implied that Bradley could be an employee, as only employees (or workers) are required to seek permission to be absent from work, the interpretation placed upon it by the Claimant's solicitors is a stretch and not something Ben is likely to have had a direct involvement in.
- f. I agree with Mr Duffy's line of questioning to Bradley that the wording of the 30 June letter, in relation to how he perceived his then status, conveyed not the assertion that he was an employee, but instead the complaint that he was not being treated as a 'proper' co-director of the Company and instead, much to his anger, as a 'mere' employee. He very quickly, after receipt of a letter from the Company's solicitors, on or about Friday 6 July, took legal advice, with his solicitors first writing on Monday 9 July (a weekend intervening) and for the first time, the assertion as to being an employee arises (reiterated in his email of 6 July to the Company's solicitors – and probably, I find, with the benefit of the same advice).

14. Employment Status: I find that the Claimant was not an employee of the Respondent, for the following reasons (applying the facts found above):

- a. Personal Service: this issue never arose, in this two-man company. Indeed, it was never likely to arise, as the Claimant clearly had a well-established personal connection with Mr and Mrs Sellers and was unlikely, therefore, to want to ever 'substitute' another to do that work. It was clear, however that the Respondent/Ben had no difficulty with the Claimant doing so, if he had wished. There was not, therefore, beyond the Claimant's choice to do so, any strict requirement that he provide personal service.
- b. Control: as found above, the Claimant exercised a considerable degree of control, well beyond what might be expected by even a

senior employee, in particular setting the rate of his own pay and dividends, having no obvious oversight on his work on the Sellers' contract (beyond the reasonable expectation that the Company earn a reasonable return from it) and being able to freeze the bank account and exclude his brother from it, because, he said, entirely apposite to this issue, he wished to 'take control', indicating that he could and did so.

- c. Mutuality of Obligation: There was no mutuality of obligation, beyond the expectation that both brothers would generate and execute sufficient work to sustain the Company, its profits, their respective incomes and pay their employees' salaries. How the Claimant did so was entirely at his discretion.
 - d. Tax and National Insurance: as stated above, there is no dispute that the Claimant paid tax by PAYE and NI on some of his income. As I have found, this was clearly done on the Company accountant's advice, for practical tax reasons, without any positive input from either witness. It is established law (O'Kelly and ors v Trusthouse Forte plc [1983] ICR 728 EWCA) that being part of the PAYE scheme and paying NI is not conclusive proof of a contract of service, but merely a factor to be taken into account in balance with others.
 - e. Integration: this factor is, I consider, next to irrelevant in this scenario.
It is difficult to imagine a situation where a person would be more 'integrated' into an organisation than in a two-brother family business. The fact that the Claimant was thus 'integrated' does not render him an employee, but a director and shareholder in a family business.
 - f. Intentions of the parties (applying Quashie): as found above, I consider that the Claimant's adoption of employment status is a belated one and not reflecting his genuine views at the time he was still involved in the Company (i.e. to the end of June). Ben was, perhaps understandably, oblivious to this issue, until it arose in the lead up to these proceedings.
 - g. Finally, an ability to work for others at the same time as for the main 'employer' indicates self-employment.
15. Conclusion as to 'Worker' Status. Nor do I consider the Claimant to have been a worker of the Respondent, for the following reasons:
- a. As decided above, there was no strict requirement for personal service.

- b. Contrary to Mr Duffy's submissions, I don't consider that s.230(3)(b) applies in this case. The Respondent was not a customer of any business undertaking carried on by the Claimant. He was not, himself, carrying on a business, but was integral to the business of the Respondent.
- c. There was little or no control over the Claimant by the Respondent.
- d. Unlike genuine workers (and indeed employees), the Claimant shared complete risk with his co-director and shareholder as to the success, or otherwise, of the Company.
- e. The Claimant could work for others.
- f. Even if I were incorrect in these conclusions, any 'worker' relationship undoubtedly concluded at the end of June 2018, based, as I have found, on the Claimant's actions at the time and therefore there is no liability for any loss of earnings beyond that point.

Conclusions

- 16. For these reasons, therefore, I find that the Claimant was neither an employee, nor worker of the Respondent and that accordingly the Tribunal has no jurisdiction to hear his claims, which are therefore dismissed.

Employment Judge C H O'Rourke
Date: 14 January 2020

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