



EMPLOYMENT TRIBUNALS

Claimant:

Mr Paul Gabbott

v

Respondent:

Mrs Marilyn Chapman t/a
Manor Farm

Heard at:

Reading

On: 13 March 2020

Before:

Employment Judge Hawksworth

Appearances

For the Claimant: Mr S Gill (union representative)

For the Respondent: Ms V Chapman (daughter)

RESERVED JUDGMENT

1. The claimant was a worker for the respondent.
2. The respondent did not make any unauthorised deductions from the claimant's wages; the respondent paid the claimant in accordance with the agreements between them.
3. The claimant's complaint therefore fails and is dismissed.

REASONS

Claim, hearings and evidence

1. The claimant presented his claim form on 6 February 2019 after Acas early conciliation from 17 January 2019 to 5 February 2019. His claim is for unauthorised deduction from wages for the period from February/March 2018 to January 2019 when he lived, and he says worked, on the respondent's farm.
2. At a preliminary hearing on 11 December 2019 the respondent was given an extension of time to present her grounds of resistance. The respondent defends the claim and says that the claimant was not employed to work on the farm.

3. The full merits hearing took place on 13 March 2020. The respondent made an application to postpone the hearing which was refused on 12 March 2020.
4. The respondent did not attend the hearing. Her doctor wrote a letter dated 12 March 2020 to say that she was concerned that the respondent was not fit to attend the hearing and that the added stresses of the hearing may exacerbate her symptoms. The respondent's daughter Ms V Chapman (accompanied by Mr Gray) attended on the respondent's behalf and with the respondent's authority. At the start of the hearing Ms Chapman said that the respondent's unfitness to attend the hearing was unlikely to improve and they would rather go ahead with the hearing.
5. At the hearing I heard evidence from the claimant and from Ms V Chapman. Both had prepared typed witness statements.
6. I was also provided with a number of other witness statements. I informed the parties that I would read the statements and attach such weight to them as I thought appropriate, bearing in mind that these witnesses had not been questioned. I read statements from the following:

For the claimant:

Claire Boffin (a potential tenant of the farm)
H Anthony Fetcher (the claimant's former employer)
Jaclyn Smith (a friend of the claimant who visited the farm)
Helen Horsman (a friend of the claimant who visited the farm)
Henry Wright (a contractor who assisted with plastering)

For the respondent:

Adam Gray (the partner of Ms V Chapman)
Lucy Woodend (the respondent's daughter)
Michael Gladman (the civil partner of Ms Woodend)
Caroline Chapman (the respondent's daughter)
William Batchelor (a farm worker at the farm)
Timothy Batchelor (an agricultural contractor who provided services to the respondent)

7. Mr Gill had prepared a bundle for the hearing. It had 103 pages and included some of the statements which had been produced by the respondent.
8. Ms Chapman brought some documents to the hearing which had been sent to the claimant's representative the evening before the hearing. Some of these documents were not included in the bundle. Mr Gill said he had read them and discussed them with the claimant and he did not require any additional time to consider them. I allowed the following documents to be included with the written statements:
 - i) A letter from Mr and Mrs Wilson (friends of the respondent)

- ii) A letter and supplemental statement from Ms Woodend.
9. The respondent's documents also included some police statements. There was a statement which had been made to the police by the respondent in March 2019 in which she made complaints against the claimant. A second statement recorded that the respondent had withdrawn her complaints, but Ms Chapman told me that as of the week of 2 March 2020 the police were considering reopening it. Both the claimant and the respondent had made other complaints to the police about each other.
10. I took a short break during the hearing to consider this. I decided that the criminal allegations do not overlap with the questions of the claimant's employment status and entitlements. These are the questions for me to consider. I informed the parties that I would not take the police statements or any of the criminal allegations into account as they were not relevant to the claimant's employment tribunal complaint. I gave the police statements back to Ms Chapman.

The factual and legal issues for me to decide

11. The main factual issue for me to decide is whether there was an agreement between the claimant and the respondent that the claimant would be paid £500 per week to work on the respondent's farm.
12. The legal issues for me to decide are:
- 12.1. Was the claimant a worker for the respondent as defined by section 230(3) of the Employment Rights Act 1996?
 - 12.2. If the claimant was a worker for the respondent, were unauthorised deductions made from his wages, and if so, how much?

Findings of fact

The claimant's move into a property on the respondent's farm

13. The respondent is 75 and has a farm near Chipping Norton. She lives in the farmhouse. A farm worker, William Batchelor, lives part of the time in another property on the farm and his brother, Timothy Batchelor, is an agricultural contractor who also works on the farm.
14. The claimant put up an advert in a shop seeking accommodation to rent. The respondent replied to the claimant's advert. The claimant and the respondent agreed that the claimant would move into a property on the respondent's farm and would pay rent of £150 per week. That arrangement was not recorded in any tenancy agreement or other document.
15. In around January 2018, the claimant (and his dogs) moved into the respondent's property. The claimant paid the agreed rent to the respondent for a number of weeks. He paid in cash.

16. The claimant did not have a car. The respondent drove him to town on occasion.
17. When he first moved into the property on the farm, the claimant was working as a chef in a pub nearby. Some time later, the claimant left his job as a chef.
18. The claimant said that at this point he began working for the respondent. The claimant's documents and evidence were not consistent as to when this happened. He said in his witness statement that it was 12 February 2018, however in his schedule of loss he said 12 January 2018 and in his claim form he said 12 March 2018. In his evidence the claimant was also unclear about about this, but he said it was probably March 2018.
19. I find that the claimant left his job as a chef around 12 March 2018. That was what he thought was most likely. Also, it was the date he gave in his claim form, and this was prepared in February 2019 when the chronology would have been fresher in his mind than at the time he prepared his schedule of loss and witness statement. Further, the March date is more consistent with the evidence from the claimant's bank statements, to which I return below.
20. By the end of March 2018 at the latest the claimant had stopped paying rent to the respondent.

The claimant's position from March 2018

21. There is an important factual dispute about what was agreed between the claimant and the respondent after he stopped working as a chef.
22. The claimant said that the respondent asked him to work on the farm, and agreed to pay him £500 per week. He said it was agreed that deductions would be made of £150 for rent and £50 for utilities (so after rent and utilities, he would receive £300 per week). The claimant said this agreement was verbal and was not recorded in any document.
23. The respondent said that the claimant helped out with some things by way of reciprocal support with the respondent and that he was paid on one occasion, but that he was not employed by the respondent to work on the farm.
24. I find that the respondent paid the claimant one payment of £350 in cash. I accept the evidence of the claimant that this was about 10 days after he left his job as a chef, and I therefore find that this payment was made around 22 March 2018. The claimant did not suggest that there was any unauthorised deduction from this payment.
25. I return below to the question of whether there was an agreement between the claimant and the respondent that he would be paid £500 per week to work on the farm after 22 March 2018.

The Airbnb lettings

26. The respondent has two cottages which are let as holiday cottages, one on the farm and one in a village near the farm. The respondent also planned to let out her farmhouse as a holiday let from time to time.
27. Towards the end of March 2018, the claimant and the respondent spoke about the claimant helping with the holiday cottages. The respondent said she could not afford to pay the claimant. Her financial circumstances were difficult. The claimant said, and I accept, that he and the respondent agreed that if the claimant fixed up the cottage in the village he could advertise it on Airbnb. He also said, and again I accept, that it was agreed that if the claimant made any money from Airbnb then he could keep it and that would be classed as a wage, the rental income from the cottage bookings would be 'an income' for the claimant. This arrangement was not recorded in writing.
28. Based on the evidence in the claimant's bank statements which were included in the claimant's bundle, I find that this discussion is likely to have taken place in late March 2018, because after this the bank statements include expenditure on the cottages.
29. The claimant spent about six weeks doing up the cottage in the village. He carried out most of the work himself. Henry Wright assisted with some plastering. The claimant paid for what was needed to do up the cottage and get it ready for letting.
30. The cottage was advertised on the Airbnb website. The claimant was set up on the website as a host in his own name and he dealt with queries about the bookings.
31. The claimant began receiving payments of rent from Airbnb. The payments from Airbnb went directly into the claimant's bank account. The claimant received around £9,000 in rental income.
32. At some point after April 2018, the person who cleaned the other holiday cottage which the respondent owned (the cottage on the farm) left. After that, the claimant took over making beds, and doing laundry for that cottage, as well dealing with that cottage on the Airbnb website.
33. The respondent was also planning to let out her farmhouse on Airbnb from time to time. The claimant helped her to re-arrange her furniture for this.
34. At some point between April and December 2018, after an altercation with a visitor to the Airbnb property in the village, the claimant was barred by Airbnb from being a host. He continued to deal with queries about the property bookings by using the respondent's login.
35. In addition to the claimant's involvement with the Airbnb cottages, the claimant did some other things around the farm. He fed the chickens and ducks near his property and checked the horses when he was walking his

dogs. He did these things because he enjoyed looking after the animals. He did what he described as 'other little things' like moving logs and doing the shopping.

36. During the time he lived on the respondent's farm, the claimant worked as a chef for two weeks over Christmas 2018 but otherwise did not have any other job.

The agreement between the claimant and the respondent

37. There is a disputed factual issue of whether there was an agreement that the respondent would pay the claimant £500 per week. This is difficult to determine. The respondent did not attend the hearing to give evidence. This does not mean that I should accept the claimant's evidence without further consideration, especially as there were no documents setting out any agreement between the parties and the claimant's evidence about when the agreement was made, an important aspect of the agreement, was not consistent.
38. I have to look at all the evidence before me and make a finding of fact as to what I consider is most likely to have happened. The facts as found by me which assist me with this include the following:
- 38.1. the claimant had stopped paying rent to the respondent by March 2018;
 - 38.2. the respondent paid the claimant £350 on about 22 March 2018, about 10 days after the claimant left his job as a chef;
 - 38.3. in the discussions about the holiday cottages, the respondent told the claimant that she could not afford to take him on 'on a wage';
 - 38.4. the respondent's financial circumstances were difficult;
 - 38.5. the claimant said he had a discussion with the respondent where it was agreed that the Airbnb rental income would be 'an income for him';
 - 38.6. the Airbnb rental income was paid directly to the claimant;
 - 38.7. the things the claimant did around the farm were small tasks (helping out with animals, which he liked doing, shopping, and moving logs) and were the sort of things neighbours might help each other with;
 - 38.8. the respondent helped the claimant by giving him lifts;
 - 38.9. there was a farm worker who worked (and lived part of the time) on the farm and an agricultural contractor who worked on the farm.
39. Weighing these factors up, it seems to me that it is unlikely that, when she was in difficult financial circumstances and already had people working on the farm, the respondent would have agreed that the claimant would be paid £500 per week in addition to the Airbnb income.
40. I conclude that it is more likely that the single payment of £350 by the respondent to the claimant was a payment for around 10 days work in approximately 12 to 22 March 2018, and that after that, towards the end of March 2018, the claimant and the respondent reached a different

agreement that, rather than being paid by the respondent, the claimant would do up and look after the holiday cottages in return for keeping rental income from Airbnb (and while not having to pay rent himself).

41. I find therefore that there were two agreements between the claimant and the respondent:
 - 41.1. first, an express unwritten contract that the claimant would be paid in cash in relation to work carried out from approximately 12 to 22 March 2018; and
 - 41.2. second, an express unwritten contract in relation to the Airbnb lettings, under which, in return for his work on the cottages, the claimant would retain Airbnb income and not have to pay rent to the respondent for the property he was living in. This agreement included all the work the claimant did in respect of the two holiday cottages and on the farmhouse in anticipation of letting it out on Airbnb.
42. If there was any earlier agreement between the parties that the claimant would be paid weekly by the respondent for any work after 22 March 2018, this was terminated and replaced by the second agreement.
43. I find that there was no separate agreement that the claimant would be paid for the other things he did around the farm after 22 March 2018, and that he did these things either because he chose to, or as reciprocal support as a neighbour of the respondent.
44. I find that the claimant carried out the work for the respondent himself. He did arrange for some plastering to be done on one of the cottages but the responsibility for doing up and looking after the properties remained his. Given the context in which the contracts were made, where the claimant was living on the respondent's property, I find that it is unlikely that the respondent would have permitted the claimant to ask someone else to do that work under either of the contracts; the agreement was personal to the claimant.

The relevant legal principles

45. The claimant's claim is for unauthorised deduction from wages under section 13(1) of the Employment Rights Act 1996 which provides:

"An employer shall not make a deduction from wages of a worker employed by him unless –

- a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or*
- b) *The worker has previously signified in writing his agreement or consent to the making of the deduction."*

Wages

46. Wages are defined in section 27 of the Employment Rights Act. Sub-section (1)(a) provides that wages include:

“Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise”

Worker

47. A person must be a worker of an employer to bring a complaint under section 13.

48. A worker is defined under section 230(3) of the Employment Rights Act as:

“an individual who has entered into or works under (or, where the employment has ceased, worked under):

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is 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”.

49. There are therefore two ‘routes’ to qualify as a worker, sub-section 230(3)(a) and sub-section 230(3)(b).

50. The first route, sub-section 230(3)(a), includes all employees in the definition of worker, because all those who work under a contract of employment are workers.

51. The second route to qualify as a worker, sub-section 230(3)(b), is wider: it includes some people who are not employees. Someone who is not an employee but who is a worker because they fall within the definition in sub-section 230(3)(b) is sometimes referred to as a “limb (b) worker.”

52. Lady Hale in Bates van Winkelhof v Clyde & Co LLP 2014 ICR 730, SC said that when considering whether someone is a limb (b) worker, *‘there can be no substitute for applying the words of the statute to the facts of the individual case’*. The following factors are necessary for an individual to fall within the definition of ‘worker’:

- 52.1. there must be a contract, whether express or implied, and, if express, whether written or oral;

- 52.2. that contract must provide for the individual to carry out personal services; and
- 52.3. those services must be for another party to the contract who must not be a client or customer of the individual's profession or business undertaking.
53. In Bates van Winkelhof, Lady Hale drew a distinction between self-employed people who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them (who are neither workers nor employees), and self-employed people who provide their services as part of a profession or business undertaking carried on by someone else (who are limb (b) workers).

Conclusions

54. I have applied the relevant legal principles to my findings of fact in order to decide the legal issues for determination.

Was the claimant a worker for the respondent as defined by section 230(3) of the Employment Rights Act 1996?

55. The first issue for consideration is whether the claimant was a worker. It is necessary for the claimant to have been a worker for him to be able to bring a complaint of unauthorised deduction from wages. I have considered the elements of the definition in sub-section 230(3)(b) as it is wider than sub-section 230(3)(a). Anyone who qualifies under sub-section 230(3)(a) will also come within sub-section 230(3)(b).
56. The first element is whether there was a contract between the claimant and the respondent.
57. I have found that there was an express unwritten contract in relation to work carried out by the claimant from about 12 to 22 March 2018. I have found that there was then another express unwritten contract in relation to the Airbnb lettings, which was for the claimant to retain the Airbnb income and have a waiver of his rent.
58. The services carried out by the claimant were for the respondent. They were related to properties owned by the respondent. The claimant fixed up one holiday cottage, dealt with the Airbnb website for the cottages, and carried out other tasks in relation to the second cottage and the farmhouse.
59. Was the respondent a client or customer of the claimant's profession or business undertaking? If so, the claimant is not a worker. I conclude that the respondent was not a client or customer of the claimant. The claimant's profession was as a chef. He did not run a business fixing up or managing properties and did not do work of this nature for anyone else. He

was not providing his services to the respondent as part of a business of his own.

60. The last element of the (limb (b)) worker test is for me to consider whether the contracts provided for the individual to carry out personal services. I have found that the contracts provided for the claimant to carry out personal services.
61. I therefore conclude that the claimant was a worker of the respondent for the purposes of sub-section 230(3)(b) of the Employment Rights Act, both in respect of the work he did during the period of around 12 to 22 March 2018, and in respect of the agreement regarding the Airbnb lettings.

Were unauthorised deductions made from the claimant's wages, and if so, how much?

62. In relation to the first contract, the claimant did not suggest that there was any deduction from the £350 paid to him in March 2018.
63. In relation to the second contract, I have found that there was no agreement that the claimant would be paid £500 per week. Rather, it was agreed in late March 2018 that the claimant would retain the Airbnb rental income (and he would not have to pay any rent) in return for the work he did on the holiday cottages and the respondent's farmhouse. The Airbnb income was wages within the definition of section 27 of the Employment Rights Act 1996. The rental income amounted to sums payable to the claimant in connection with his employment as a worker, and emoluments referable to his employment as a worker pursuant to sub-section 27(1). These were payments akin to commission, that is, whether they were payable or not, and the amount that was paid, depended on the results of the claimant's work. The fact that they were paid direct to the claimant from Airbnb rather than being paid to the respondent first does not affect this.
64. The respondent was paid the Airbnb rental income in line with his agreement with the respondent. He was properly paid the sums he had agreed with the respondent that he would be paid. I conclude therefore that there has been no unauthorised deduction from the claimant's wages. The claimant's claim therefore fails and is dismissed.

Employment Judge Hawksworth

Date: 30 March 2020

01.06.2020

Sent to the parties on:

J Moossavi

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For the Tribunals Office

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