



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
(BY CLOUD VIDEO PLATFORM)

BEFORE: EMPLOYMENT JUDGE REED

WITH MEMBERS: MS C BECKETT
MR G MANN

BETWEEN:

Claimant MS T ARMITAGE

AND

Respondents MRS J M BOOR (T/A DANCE WITH ANNARIE)

ON: 3-5 NOVEMBER 2020

APPEARANCES:

For the Claimant: Mr J Sykes, Advocate

For the Respondent: In Person

JUDGMENT

The unanimous Judgment of the tribunal is that the Claimant was neither an employee nor a worker of the Respondent and accordingly her claims fail.

REASONS

1. In this case the Claimant Ms Armitage made a number of claims against the Respondent Mrs Boor, whom she identified as having been her employer between April 2018 and January 2019. She claimed that she was entitled to remuneration for the work she carried out for Mrs Boor

through that period; that there had been breaches of the National Minimum Wages Regulations; that she had not been given notice of dismissal or a statement of principal terms of employment; and furthermore that she had been discriminated against on the ground of disability.

2. The claims were all denied by the Mrs Boor. Specifically, she did not accept that she had ever employed Ms Armitage or that the Ms Armitage was a worker of hers.
3. We heard evidence from the Ms Armitage herself and on her behalf from her parents, Mr and Mrs Armitage, Ms Radford, Principal of Italia Conti Associates Ruislip and Mrs Pink, Principal of Acton and Maida Vale Ballet School. A statement from Mr Green, a friend of Ms Armitage, was taken as read because Mrs Boor did not wish to ask him any questions.
4. For Mrs Boor, we heard from herself alone. She also referred us to witness statements produced by Mr Donovan, Mr Henderson, Ms Lusted, Ms Farmer and Ms Brown.
5. In addition, our attention was directed to a number of documents and we reached the following findings of fact.
6. In 2017 the daughters of Ms Armitage and Mrs Boor were both attending stage school. Mrs Boor became unhappy with the performance of the school and decided to start up a dance class for children herself.
7. Ms Armitage became aware of this and contacted Mrs Boor, effectively to see if she could play some part in the dance class.
8. As a consequence, the parties met on two occasions in March 2018 to discuss the way in which Ms Armitage might assist. There was a fundamental dispute between the parties as to what was said and agreed in the course of those meetings. Ms Armitage insisted that Mrs Boor agreed that she should become her employee, acting as a receptionist when the classes took place. Although she would not be paid immediately, there would come a time when she would be paid and, indeed, at that time she would receive 'back pay' for all the work she had previously done. Ms Armitage said that there was also a discussion about a film that Mrs Boor intended to produce later that year.
9. Mrs Boor denied that version of events. She said that it was agreed that Ms Armitage would be a volunteer. She would indeed carry out the duties of a receptionist for the three-hour period on a Saturday afternoon when the dance classes took place but she would not be paid for that work. Furthermore, she insisted that there was no discussion at that stage about the film.

10. In any event, from 21 April 2018 Ms Armitage did attend the dance classes and carried out the duties of a receptionist, greeting the parents that brought their children and registering attendance. She continued to do so throughout the rest of 2018 on a regular basis.
11. Ms Armitage was keen to become a licenced chaperone, in which capacity she would be allowed to accompany children on to TV and film sets. As part of that process she applied for a licence to the local authority. At the suggestion of Mrs Boor, she described Mrs Boor as having been her part-time employer for several months.
12. A film was shot by Mrs Boor and her husband in the summer of 2018. In the course of the filming, Ms Armitage acted as a production assistant and informal chaperone (there was a licenced chaperone present). She also took an acting part in the film itself. She received no payment for that work.
13. In the course of 2018 certain approaches were made both by Ms Armitage and her father to Mrs Boor to see if they might invest financially in the businesses of Mrs Boor. However, Mrs Boor was not interested.
14. Although Ms Armitage did act as a receptionist on a regular basis, there were occasions on which she did not attend the classes. There would be various reasons for absence, such as illness or the fact that she was busy doing something else. That did not appear to be any particular problem for Mrs Boor.
15. On 28 January 2019 Mrs Boor indicated to Ms Armitage that her services as a receptionist would no longer be required.
16. That did not appear to sour the relationship between the parties and shortly afterwards Ms Armitage sent Mrs Boor a congratulations card. The card incorporated a photograph from the film shot earlier in the year and Mrs Boor pointed out to her that that might cause problems with copyright.
17. Mrs Boor was then contacted by the mother of a child who had acted in the film, complaining that there had been inappropriate contact made by Ms Armitage with her child. Mrs Boor passed that information on to Ms Armitage but did not investigate the allegation any further.
18. In early February 2019 Mrs Boor was in direct contact with Ms Armitage's mother about Ms Armitage. Mrs Boor was concerned about Ms Armitage's mental health at that stage and considered it more sensitive to canvass certain matters with her mother in order to avoid upsetting Ms Armitage.
19. On 22 February Mrs Boor contacted Ms Armitage in connection with her (Ms Armitage's) contact with a Community Psychiatric Nurse.

The Law

20. Under Section 13 of the Employment Rights Act 1996 an employer shall not make a deduction from the wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of a worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.
21. An employee is entitled (in the absence of gross misconduct) to be given notice of termination of his or her contract.
22. Under Section 230 of the Act, an employee means an individual who has entered into or works under a contract of employment and a worker means an individual who has entered into or works under a contract of employment or any other contract, 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 a client or customer of any profession or business undertaking carried on by the individual.
23. Under Section 6 of the Equality Act 2010, a person has a disability if she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.
24. Under Section 13 of the Act, a person (A) discriminates against another (B) if, because of a protected characteristic (such as disability), A treats B less favourably than A treats or would treat others.
25. Under Section 20 of the Act, where a provision, criterion or practice of an employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer is required to take such steps as it is reasonable to take to avoid the disadvantage.
26. Under Section 39 of the Act, an employer must not discriminate against an employee of hers by dismissing that employee or subjecting that employee to any other detriment.
27. Ms Armitage claimed that there had been unauthorised deductions from her wages in respect of the work that she carried out between April 2018 and January 2019 (in that she had not been paid at all), and further that she was entitled to holiday pay and notice when that arrangement was terminated. In addition, she asserted that she was a disabled person and that various actions of Mrs Boor amounted to unlawful discrimination against her.
28. We should add that Mr Sykes in his written closing submissions indicated

that an issue for us to determine was “did [Mrs Boor] dismiss [Ms Armitage] because of her right to the minimum wage”? There does not appear to be a cause of action that would reflect such an issue. Insofar as it is intended to refer to Section 104 of the Employment Rights Act, it is not correctly stated. There was no suggestion, for example, that Ms Armitage’s engagement was terminated because she asserted she had not received payment to which she was entitled.

29. At the heart of all the claims was the employment status of Ms Armitage. She simply asserted that she was an employee or alternatively a worker of Mrs Boor throughout the period in question. Mrs Boor insisted that she was a volunteer. It was conceded that if Mrs Boor was right, none of her claims could go forward.
30. In order to determine the nature of the arrangement between the parties, it was necessary for us to consider what an objective bystander observing the exchanges in March 2018 would conclude. It would also be necessary for us to look at the way the arrangement worked in practice.
31. Ms Armitage was entitled to point out that in her application for a chaperone licence, and at the instigation of Mrs Boor, she had indicated that Mrs Boor was her employer. Mrs Boor did not accept that that was an accurate statement.
32. It is also the case that Ms Armitage provided relatively regular service to Mrs Boor throughout the period in question.
33. However, we were not impressed by the evidence we heard by and on behalf of Ms Armitage in relation to the meetings in March 2018. The evidence from herself and indeed her mother, who attended one of those meetings, as to the detail of the discussions was not persuasive. In her witness statement, Ms Armitage indicates that she ‘assumed’ that her rate of pay would be that of the national minimum wage. That was at odds with her oral testimony to the effect that that was something expressly canvassed by herself and Mrs Boor at the meetings. Her mother, on the other hand, indicated that the minimum wage had not come into it. She told us that the agreement that had been reached was that the parties would, at some point in the future, discuss what the appropriate salary would be.
34. As we have said, Ms Armitage claimed that the agreement reached in March was to the effect that she would receive no payment immediately but payment would be made in due course. However, there was no certainty or clarity as to when that payment might be made. She indicated at one stage that it would be towards the end of the year and at another that it would be when the film was completed. Alternatively, she indicated that it would be when the business could afford it. In short, her evidence as to the nature of the arrangement was vague and unpersuasive.

35. Ms Armitage insisted that it was agreed that she would be paid for her work on the film. However, we accepted the evidence from Mrs Boor to the effect that the film was not discussed in March and furthermore no one who worked on the film was paid anything. It would have been a remarkable situation if Ms Armitage was singled out for such special treatment particularly in circumstances where a licenced chaperone was undertaking work (and Ms Armitage had not obtained her licence at that stage) but was not being paid anything.
36. We were shown a vast number of WhatsApp messages passing between Ms Armitage and Mrs Boor over the entire period in question. There was nothing in those exchanges at all inconsistent with the Claimant being a volunteer. On the contrary, they clearly indicate she is not seeking payment.
37. It was suggested on behalf of Ms Armitage that the absence of a 'volunteer agreement' suggested that she was to be remunerated. On the contrary, the absence of a contract of employment (or at least a statement of terms) was rather more remarkable.
38. On 10 and 26 February 2019, after the engagement was terminated, Ms Armitage sent messages to Mrs Boor making a request for a contract. In the first she asks for a copy of her signed contract and in the second, a copy of her employment contract. According to her witness statement, she was referring to the same document on both occasions. However, she candidly accepted that there was no such document and that she was fully aware of that fact. No contract had been produced, much less signed. She could give no sensible explanation for the production of those messages. It appeared to us likely that she was at that stage trying to construct some kind of case against Mrs Boor.
39. Throughout this period Ms Armitage was claiming benefits but she did not mention to the DWP that she was working, as she should have done if indeed she was in employment at the time.
40. We were certainly bound to ask ourselves what incentive there might have been for Ms Armitage to volunteer in the way that Mrs Boor claimed. There were a number of reasons. Firstly, she was interested in the performing arts and this was a way that she could have some sort of involvement. Secondly, she wished to apply for a chaperone licence and she was aware that Mrs Boor could assist her in obtaining it. Finally, she and her father were looking to make some kind of investment in the business or businesses of Mrs Boor. Working within the business as she did would be a useful adjunct to such an investment.
41. In our view, the parties clearly agreed that Ms Armitage would act on a voluntary basis when she undertook work for Mrs Boor, either as a

receptionist or in connection with the film. We believed that she was well aware of that fact throughout the period in question.

42. The absence of an obligation to remunerate Ms Armitage was fatal to her assertion that she was either an employee or a worker. It followed that she could not assert that there had been unauthorised deductions from her wages or any breach of the National Minimum Wage Regulations. Nor was she entitled to notice or a statement of principal terms of employment (or indeed holiday pay).
43. It is also well established that the right to claim discrimination under the Equality Act 2010 is not enjoyed by volunteers (see *X v Mid Sussex Citizens' Advice Bureau*). It followed that her claims of disability discrimination were also bound to fail.
44. For the sake of completeness, we briefly address the disability discrimination claims on the assumption that the Ms Armitage was indeed entitled to take them forward.
45. There was no doubt that Ms Armitage was a disabled person. She has a personality disorder that had lasted for well over a year at the time of the events in question. It is a mental impairment and has a substantial impact on her ability to carry out normal day-to-day activities. For example, there are occasions when she cannot get up in the morning and other occasions when she simply has to 'disengage' and go to a dark room. She hears voices which is obviously very disturbing for her.
46. Nor was it the case that Mrs Boor was ignorant of her condition. She knew from March 2018 that Ms Armitage had depression and she was therefore on notice that she might be disabled.
47. Ms Armitage said that she had been directly discriminated against in that the promise to pay her deferred wages had been broken. For the reasons we have mentioned, we concluded that there was no such promise, so that that claim had to fail.
48. It was asserted that Mrs Boor had demanded that Ms Armitage carry out duties in respect of the film. There was no suggestion, however, on the part of Ms Armitage that she did so unwillingly and certainly no reason to connect anything she did in that connection with her disability.
49. Ms Armitage's engagement was terminated in January 2019. She insisted that this was in some way related to her disability but we disagreed. It appeared that the ballet school was not performing as well as Mrs Boor had hoped. She "expanded" the classes in the hope of attracting new attendees but we did not accept that this indicated she was doing particularly well. The fact was that there was no longer a need for Ms Armitage to undertake the receptionist duties and we did not believe that

the termination of the arrangement was in any way connected to Ms Armitage's disability.

50. It was suggested that Mrs Boor's reaction to the congratulations card was in some way an act of direct discrimination. We did not agree. If one reads the relevant WhatsApp messages it is clear that she was being as careful and as sensitive as she could about this matter but she was bound to raise with Ms Armitage her genuine concerns about breach of copyright. It had nothing to do with Ms Armitage's disability.
51. Mrs Boor raised with Ms Armitage the complaint that she had received from a parent about the contact that Ms Armitage had had with her child. She was bound to do so and this had nothing to do with Ms Armitage's disability. It was claimed that this was in some way a failure to make 'reasonable adjustments'. It was suggested that the 'provision, criterion or practice' of the Respondent that disadvantaged Ms Armitage was Mrs Boor's practice in determining that a mentally disabled person was at fault in any allegation against them, without conducting an investigation. That was simply no reflection of the attitude of Mrs Boor. There was no such practice.
52. In February 2019 Mrs Boor contacted Ms Armitage's mother to discuss Ms Armitage. She only did so because of Ms Armitage's mental state and to see how matters might be resolved without unduly upsetting her. Clearly, that only happened because of Ms Armitage's disability. It would follow that if it amounted to less favourable treatment she would have been directly discriminated against (had she been an employee). We could see how Ms Armitage might regard being "bypassed" in this way was unfavourable and of course Mrs Boor's motive was not relevant. However, on balance we believed this was not less favourable treatment, in circumstances where there was no reason to suspect any issue or animus between Ms Armitage and her mother.
53. Finally, it was suggested that Mrs Boor had implied in a message that Ms Armitage needed psychiatric help. In fact, what Mrs Boor wrote was "I hope your sessions with Sarah (the Community Psychiatric Nurse) prove supportive". That statement was clearly intended to be supportive itself. Although it was related to Ms Armitage's disability, it did not amount to less favourable treatment and therefore was not capable of being an act of unlawful discrimination.
54. In any event and for the reasons we have given, Ms Armitage's claims failed in their entirety.

Employment Judge Reed

Date: 20 November 2020