



EMPLOYMENT TRIBUNALS

Claimant

Mr A McGuire

Respondent

v The Trustees of the Mildenhall Social club on behalf of the Members

Heard at: Bury St Edmunds (by CVP)

On: 06, 07 and 08 January 2021

Before: Employment Judge Cassel (sitting alone)

Appearances

For the Claimant: In person.

For the Respondent: Miss S Bullen-Manson (Counsel).

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing on the papers which had not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT

The Claimant was not an Employee nor a Worker of the Respondent and the Tribunal has no jurisdiction to hear his complaints of notice pay, holiday pay and other sums. The claims are dismissed.

REASONS

Background

1. In his claim to the tribunal the claimant, Mr Anthony John McGuire claims sums in respect of notice pay, holiday pay and other payments from the respondent. He avers that he was employed by the respondent from 1 July 2018 until 31 July 2019 as the Director of Facilities.

2. The matter came before Employment Judge Kurrein on 9 April 2020 who adjourned the claims to an Open Preliminary Hearing to determine a number of matters. The principal issue to be determined is whether the claimant was either an employee or a worker engaged under a contract of employment or a contract to perform services personally with and for the respondent.
3. The respondent is an unincorporated association and has resisted the claim contending that any such appointment was ultra vires.
4. The matter was listed for three days and I heard evidence from the claimant, Ms Lisa Jones, Ms Shanida Feltner, Mrs Anne Greenfield and Mr Ken Thompson all of whom had prepared statements. I was also presented with an agreed bundle of documents and at the end of the hearing with a bundle of minutes and a written closing statement from Ms Bullen-Manson, and oral submissions from the claimant, for which I am grateful.

Findings of Fact

5. I make the following findings of fact based on the balance of probabilities having considered those documents to which my attention was drawn.
6. The respondent is a social club run by committee and governed by a constitution. It is an unincorporated association. Within the bundle of documents there with three versions of the constitution. One was loosely described as "The Constitution of 2016", the second was described as "The constitution of 2017" and the third as the "The Constitution of 2018".
7. The "constitution of 2016" was probably in existence long before 2016, but on that I make no finding of fact. Mr Thompson referred to a shorter version which was in existence previously. He described it as being "short and sweet". I heard evidence from Ms Lisa Jones that the various versions of the constitutions were kept behind the bar at the social club. The impression I was given was that it was somewhat haphazard and no proper filing system was in place but the constitution, or whatever version was requested, was available for inspection by the members.
8. I heard a considerable amount of evidence regarding the constitution and whether it had been amended or replaced by a later version. However, there was little dispute in reality that the relevant constitution was the one described as being of 2016. In any event if I am wrong the relevant provisions of the constitution were varied to a limited extent and in reality make little difference to the conclusion that I reach in these proceedings.

9. The claimant was the Chairman of the Respondent from 11 February 2016 until 30 July 2019 when he resigned.
10. The respondent had been in existence for many years and in or around 2005/2006, according to the evidence given by Mrs Greenfield, an arrangement was reached with a well-known supermarket for the club premises to be vacated and on which site a new supermarket was built and for the club to be moved elsewhere. She described the change as being akin to moving from a garden shed to a gin palace. In her words the club was given a beautiful facility which was amazing. A substantial amount of money was also provided by way of cash to provide the relocation and what was described by her as a healthy bank balance. The trustees of the respondent included local businesspeople but Mrs Greenfield described their approach as being one which was not based in business and she referred to an attitude pervading the respondent akin to that experienced by a lottery winner.
11. In any event it is common ground that over the years that followed the club was not managed as well as it might have been and there were substantial losses. The claimant described the running costs to be in the region of £94,000 per annum and referred to just one year of profit during his association with the club. There was no evidence before me that the losses were as a result of any wrongdoing. The impression that was given was that there were many well-meaning and in many cases hard-working individuals who did their best to provide a valuable local facility, and in this regard Ms Jones was an impressive witness. However many of the necessary requirements of a well-run business were simply overlooked.
12. In the same manner as the respondent was managed, much of the evidence that I heard from the various witnesses was vague and conflicting. I had no doubts that the various witnesses were doing their best to recall the events which are relevant to these proceedings but there was nothing to suggest that contemporaneous notes were kept and in any event the record-keeping was poor. Brief minutes of meetings were produced. It is possible that one or more meetings were held and that if minutes were taken they were mislaid, and their existence overlooked.
13. Insofar as the minutes are relevant, and I accept the submissions made by Miss Bullen-Manson, there was nothing to demonstrate that the "2016 Constitution" was changed nor that the subsequent salary paid to the claimant was disclosed.
14. I find that the "2016 Constitution" was the one that is relevant in these proceedings. Within the constitution there were rules relating to the constitution of the management committee, at clause 14, and of particular relevance in these proceedings, provisions at clause 13(9) in which was provided the following "no officer of salary profit may be held by any member of the management committee".

15. In giving evidence the claimant accepted that in his words “I don’t know the ins and outs but I accept that the club is an unincorporated association and not a company nor a charity”. He knew there was a constitution and was taken through in evidence the various clauses that are relevant in these proceedings and accepted they were relevant in his subsequent appointment, which he claimed to have been made to a paid position.
16. If I am wrong, and the constitution was changed to the 2017 or 2018 version it makes little difference in this case. An appointment such as the one the claimant claimed to have received was dependent upon the appointment being sanctioned by either the management committee, or what was later described as the executive committee, being quorate.
17. The claimant gave evidence that a contract of employment (which is dated 2 July 2018 and which is produced at C73/74 of the bundle) is evidence of his employment. It was signed by the claimant and Mrs C McShane. Mrs McShane was unable to give evidence and sadly she suffered a recent bereavement, so I was told. Mrs McShane had a long association with the respondent but there was no evidence to conclude that she had either the express or implied authority of the club to enter into such a contract. There was no evidence that the management committee or the executive committee had sanctioned the employment of the claimant nor that the committee had sanctioned him to perform works personally as a worker for the respondent and in any event there was a clear breach of clause 13(9) of the constitution as described above. In giving evidence the claimant stated “having read the constitution now I agree that the trustees could not appoint me. I entered into the agreement in good faith and there was nothing untoward but I can’t argue that my appointment is in accordance with the constitution”.
18. The respondent avers that the claimant entered into this contract of employment dishonestly or that he could not honestly believe that he was entitled to pay. There was a dispute in evidence between the claimant and Mr Thompson that there had been discussion as to the level of salary and that it was Mr Thompson who had appointed him. Mr Thompson firmly denies it. However, his evidence in so many other regards was so vague and uncertain. On this issue I prefer the evidence of the claimant insofar as finding that he had raised the issue of salary with Mr Thompson in discussions with him but I accept Mr Thompson’s evidence that he was not empowered to agree to such a sum or indeed any sum in payment for service. I also accept Mr Thompson’s evidence that it was not he who had appointed the claimant, although the claimant apparently genuinely believed that he had been so appointed. It remains something of a mystery as to who it is said entered the contract on behalf of the respondent, a signature on a document of someone without requisite authority is no such evidence of a “meeting of minds” on the formation of a contract.

19. The payment of the claimant's salary was regularly disclosed by the respondent's accountant in terms that a sum of money was paid to him every month. The accountant's records are produced at C75 and C76 in which he is described as an "employee" and I accept the claimant's evidence that regular accounts were published and readily available to members who would have had the opportunity of querying the payment.
20. There is no cogent evidence to suggest that the claimant had acted dishonestly. Although inevitably his appointment was one in breach of the respondent's constitution it was generally accepted that he had worked hard to further the interests of the respondent and but for the circumstances in this case the respondent would have received good service from the claimant.

Conclusions

21. It will be apparent from the findings of fact made above that I had little difficulty in reaching the conclusion that I do.
22. The contract of employment is defective in any event. Section 1 of the Employment Rights Act at s.1(3) contains a provision that the statement shall contain the names of the employer and the employee. No details of the employer are given. In other circumstances that may not have been fatal to the claim as the place of work is clearly marked as being at the respondents' only place of operations.
23. However, following the submissions of Ms Bullen-Manson I have had the opportunity of reviewing the various relevant authorities laid out in Chitty on Contract in chapter 10 and elsewhere.
24. The respondent is an unincorporated association and is a members' club.
25. As an unincorporated association with a binding constitution, it is only when a contract of employment, or indeed any contract, is entered into with the express or implied consent of the parties entering into the agreement, and in this case on behalf of the respondent, that it is binding. The same provision applies to the provision of service as a worker.
26. I do find that Mrs McShane did not have the express consent of the respondent to enter into the contract of employment and there was no evidence before me to suggest that she had the implied consent of the respondent so to do.
27. I have not been asked to determine who the contracting parties may or may not be but certainly the respondent is not one of those parties.

28. For these reasons the tribunal has no jurisdiction to hear the complaints of notice pay, holiday pay and for other sums said to be outstanding. The claims are therefore dismissed.

Employment Judge Cassel

Date: 19 January 2021

25.01.2021

Sent to the parties on:

J Moossavi

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For the Tribunal Office



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