



EMPLOYMENT TRIBUNALS

Claimant: ZZ

First Respondent: QQ

Second Respondent: VV Council

Third Respondent: XX

Fourth Respondent: YY

Heard at: North East Region

On: 21 March 2019

Before: Employment Judge Shepherd

Judgment having been given to the parties on 11 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Reasons

1. The claimant was represented by AA, the first third and fourth respondents were represented by Mr Lane and the second respondent was represented by Mr Morgan.
2. I had sight of a substantial bundle of documents numbered up to page 511. I considered the documents to which I was referred by the parties.
3. I heard evidence from:
 - ZZ, the claimant;
 - YY, the fourth respondent;
 - MM, Manager of the second respondent's Personalisation and Client Financial Services.
4. The claimant is employed to provide care for QQ, the first respondent who is a disabled person. He suffers from cerebral palsy, hydrocephalus and a visual impairment. He requires 24 hour care. The third and fourth respondents are the first respondent's parents.
5. The second respondent provides a care and support package for the first respondent and the fourth respondent was appointed as the nominated person to manage the first respondent's personal budget. The second respondent's

Personalisation Support Team provides a payroll and employment support and advice service to the fourth respondent.

6. The claimant was initially employed by an agency, following an interview with the third and fourth respondents. He worked for the health care agency from 2010 until 26 April 2011.

7. On 26 April 2011 the claimant commenced employment with the fourth respondent. He signed a statement of main terms and conditions of employment on 30 November 2012 which named the fourth respondent as the employer (on behalf of the first respondent).

8. The claimant signed an updated contract with a statement of main terms and conditions of employment on 26 February 2014 which named the fourth respondent as the employer. A further statement of main terms and conditions of employment was signed by the claimant and the fourth respondent on 2 February 2016 and named the fourth respondent as the employer.

9. A further statement of main terms and conditions of employment was signed by the claimant and the fourth respondent on 22 February 2017 naming the fourth respondent as the employer.

10.. I had sight of two further statements of main terms and conditions of employment dated May and July 2018. These both named the fourth respondent as the employer but were not signed by either party.

11. The claimant raised no issue with regard to identity of his employer at the time the statements of terms and conditions of employment were signed.

12. The fourth respondent was appointed by the second respondent as the suitable person to manage the personal budget for the first respondent. The payslips name the fourth respondent as the employer.

13.The timesheets name the fourth respondent as the employer.The personal budget timesheets submitted to the second respondent name the fourth respondent as the employer.

14. The staff handbook names the fourth respondent as the employer. Holiday requests are approved by the fourth respondent. The claimant was suspended by the fourth respondent who signed letters drafted by advisers on his behalf.

15. The second respondent's personalisation team provide advisory and payroll services to the fourth respondent

16. The third respondent is the wife of the fourth respondent and the mother of the first respondent. She is also employed to provide assistance to the first respondent and is involved in administrative matters on a day-to-day basis.

17. The fourth respondent accepted that, on occasions, the third respondent signs documents on his behalf using his name. This is an unfortunate and dubious practice

but it does not make the third respondent the claimant's employer. In addition, MM, on behalf of the second respondent made it clear that it was not appropriate for a paid carer to be the employer of another paid carer. I accept that is the case. The third respondent is not the claimant's employer.

18. It was conceded on behalf of the claimant that the second respondent was not his employer.

19. The evidence clearly establishes to my satisfaction, on the balance of probabilities, that the fourth respondent is the employer of the claimant.

20. The first respondent lacks the mental capacity to enter into a contract of employment. I had sight of a transcript of a meeting with a representative of the second respondent in which there is some discussion with regard to employing carers. During that discussion it was discussed whether the first respondent got on with the carers all right and that at the end of the day he was the employer. He replied that he wanted to keep the claimant. The claimant asked who was the employer and the third and fourth respondent confirmed that the fourth respondent was his employer and his dad.

21. The claimant, perhaps understandably, has some confusion as to who his employer is. However, I am satisfied that the fourth respondent is the employer.

22. With regard to the time issues in respect of the unauthorised deductions from wages and holiday pay claims, I find that the allegations are that there has been a series of deductions up to and including 28 September 2018. The claim was issued on 2 October 2018. Section 23 of the Employment Rights Act 1996 provides that an Employment Tribunal shall not consider a complaint unless it is presented before the end of the period of three months beginning with the date of payment of wages from which the deduction was made. Where a complaint is brought in respect of a series of deductions the date for such consideration is the last deduction. In the circumstances, I am not satisfied that the claims are out of time. They are not dismissed and that issue will be considered at the substantive hearing.

Employment Judge Shepherd

21 March 2019

Sent to the parties on:

17 December 2019

For the Tribunal:

Miss K Featherstone

Judgment anonymised pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of Procedure 2013 and Art 8 of the European Convention on Human Rights, by Order of the Tribunal signed on 19 January 2021.