



THE EMPLOYMENT TRIBUNAL

OPEN PRELIMINARY HEARING

SITTING AT: LONDON SOUTH by CVP

BEFORE: Employment Judge Truscott QC

BETWEEN:
Mr J Lee

Claimant

AND

CC Cousins Limited

Respondent

ON: 12 July 2021

APPEARANCES:

For the Claimant: Mr D Lee father

For the Respondent: Mr W Lane solicitor

JUDGMENT

1. The judgment of the Tribunal is that the claimant was an apprentice between 15 June 2018 and 22 August 2020.
2. A telephone case management hearing should be fixed to make arrangements for the merits hearing.

REASONS

Preliminary

1. The Tribunal heard evidence from the claimant and Mr L Crookes, HR Manager on behalf of the respondent.

2. There was one volume of documents to which reference will be made where necessary. The numbering in the judgment refers to the pages in the electronic bundle.

Issues

3. The issues for this hearing were identified at a preliminary hearing on 10 December 2019 as follows:

- 1) Was the Claimant still an Apprentice at the date of termination of his employment?
- 2) The Respondent contends that he ceased to be an Apprentice on 1 September 2019.
- 3) If the Claimant was not an Apprentice at the date of termination of his employment, should all or part of his claim for breach of contract be struck out on any of the following grounds:
 - a) that it has no reasonable prospect of success; and/or
 - b) it was not presented in time?
- 4) The Employment Tribunal Judge will review the List of Issues (Appendix A) with the parties, list the final merits hearing and make any case management orders.

Findings of Fact

1. On 15 June 2016, the claimant joined the respondent as an apprentice. The claimant entered into a written agreement with the respondent which follows what appears to be the respondent's standard format [75-58]. It is headed APPRENTICESHIP AGREEMENT and narrates "This Agreement, together with the Apprentice Handbook, forms part of your Contract of Employment (except where the contrary is expressly stated) and sets out particulars of the main terms on which C C Cousins Ltd Eagle House, Sir Thomas Langley Rd, Medway City Estate, Rochester." The narrative goes on "This agreement is entered into in connection with JIB City & Guilds. This agreement constitutes a contract of employment and not a contract of apprenticeship." The narrative continues, "Your employment began on 15.06.2016." The agreement was signed on 21 June 2016. The agreement further narrated that "This agreement is for a fixed term and will end on or before 31.08.2019."

2. There are clauses in the apprenticeship agreement relating to training such as the following:

i) SKILL/TRADE/ OCCUPATION

Under this agreement, you will work for C C Cousins Ltd as you receive training and instruction as a Electrical Apprentice.

ii) TIME OFF FOR LEARNING/INSTRUCTION i

You will be permitted time away from the workplace during normal working hours in order that you attend courses of instruction that are necessary as part of the apprenticeship. It is a requirement of the continued operation of this agreement that you attend the courses. You may, from time to time, be asked to produce evidence of your attendance. You will apply yourself diligently, both in respect of those courses and during your work, to acquire the skills involved. Should you be removed from the course due to your conduct, this agreement will terminate.

iii) EXAMINATIONS AND ASSESMENTS

It is a requirement of the continued operation of this agreement that you attend for and pass any examinations and/or assessments (this includes all examinations, tests and assessments that are incorporated into the successful completion of the apprenticeship). You will exercise due diligence in order to pass each examination. Should you fail at first attempt without good reason, you must re-sit the examination. Failure at the second attempt without good reason will result in the termination of this agreement.

You must produce for inspection examination results, coursework or other work produced by you as part of the apprenticeship, and any other course related documentation which we may reasonably request.

3. There are also clauses in the apprenticeship agreement which would be expected in a statement of terms and conditions of employment which are not repeated here.
4. In addition to the apprenticeship agreement, an individual learning agreement was also entered into between the claimant, the respondent and a third party, JTL which was signed on 14 July 2016 which confirmed that the claimant would be attending Mid Kent College from 11 September 2016 onwards [59-63], undertaking a Level 3 Electrotechnical Qualification with the respondent. In section 4, the agreed learning start date is 14 July 2016 and the planned end date is 15 September 2020. In section 7, the anticipated completion date for the qualification is 15 September 2020 [60].
5. On 26 January 2019, the claimant was provided with a mobile telephone, a van and worked with less supervision.
6. At the end of the claimant's third year, the respondent offered him further employment. He was issued with a statement of main terms of employment in August 2019 which confirmed that he would be employed as an Electrical Improver from 1 September 2019 and that his wage would increase to £8 per hour [66-68]. His job title of apprentice did not change on the personnel system [128-129]. This was not a position for a fully qualified electrician
7. Within the fourth year of the claimant's learning agreement, he no longer had to attend college 1 day per week. It was his responsibility to complete his portfolio and to put the knowledge he had learnt into practice to prove his competency and to evidence this to his assessor at JTL.
8. In mid-2020, the respondent found it necessary to make redundancies. The claimant was selected for redundancy and dismissed [94].
9. JTL told the claimant on 5 May 2021 that the respondent did not notify them that his Apprenticeship Agreement had been terminated [125] in accordance with the Learning Agreement. The respondent did contact JTL following his redundancy to confirm that the claimant had been made redundant [126].
10. In a letter dated 18 June 2021, JTL wrote as follows [126]:

11. "I can confirm that Joshua Lee commenced a government-funded electrotechnical apprenticeship on 14th July 2016 and had an expected end date of 15th September 2020. His employer was CC Cousins Limited, and his training provider was JTL.
12. It is a requirement of the government funding rules that apprentices are employed throughout their apprenticeship and JTL requires that employers confirm that an employment contract has been issued. We would not be concerned if the job title changed as long as it was understood by all parties that the apprenticeship status was continuing until successful completion.
13. We have worked with CC Cousins for many years and they have successfully trained many apprentices with us and we have every confidence that they fully understand their responsibilities towards an apprentice.
14. We understand that, following a period on furlough due to the Covid-19 pandemic, Joshua was made redundant by his employer on 27th August 2020. This was unfortunate as it would appear that Joshua had completed his academic studies and was about 70% of the way to successfully completing his apprenticeship. However, we recognise that this situation will arise, in certain circumstances, when hard business decisions have to be made and a number of our employers have found themselves in similar circumstances as a result of the pandemic.
15. We will always do our best to assist the apprentice and I can confirm that JTL continued to support Joshua and will, as far as is possible within the government funding rules, assist him to complete his apprenticeship."

Submissions

16. The Tribunal heard oral submissions from both parties. There was no reference to any relevant legal principles. The Tribunal found that there is a relevant statutory provision and potentially relevant legal principles.

Law

17. The Apprenticeships, Skills Children and Learning Act 2009 introduced the requirement for an apprenticeship agreement to be in place when engaging an apprentice under a statutory apprenticeship.
18. The apprenticeship agreement forms part of the individual employment arrangements between the apprentice and the employer; it is a contract of service (i.e. a contract of employment) and not a contract of apprenticeship. If all the requirements of section 1 of the Employment Rights Act 1996 are complied with, the apprenticeship agreement can also serve as the written statement of particulars of employment. The full requirements for an apprenticeship agreement can be found in regulation A1 of ASCLA and the Apprenticeships (Miscellaneous Provisions) Regulations 2017.
19. The practical period is the period for which an apprentice is expected to work and receive training under an approved English apprenticeship agreement. The practical period does not include the end-point assessment. The end date is when the end-point assessment is due to be completed.

Discussion and Decision

20. There was no evidence that this was a statutory apprenticeship. The documents produced do not state that this was a statutory apprenticeship but the structure of the agreement and training contract seem to meet most of the statutory requirements. The apparently contradictory statement of the apprenticeship agreement not being an apprenticeship agreement does meet what seems to be required by the statutory provision.
21. Both the claimant and the respondent recognised that the claimant was in a different category of apprentice in his fourth year but neither party argued that he was a fully qualified electrician which he would have been at the end of his apprenticeship.
22. The Tribunal was naturally hesitant to make a finding contrary to a written document which had been signed by both parties. However, the document was a standard one to the respondent and the claimant had little choice but to sign it if he wished to be an apprentice. For whatever reason, the respondent chose not to address the Tribunal on any relevant aspect of the law but found on the apprenticeship agreement. The Tribunal concluded that the apprenticeship agreement was erroneous as to its term and end date. The apprenticeship agreement should have had a termination date of 15 September 2020 which would reflect the provisions of the learning agreement and the increase in responsibility in the fourth year and end with the claimant becoming a fully trained in September 2020. The provision of a new contract as an electrical improver did not alter his status as an apprentice.
23. What troubled the Tribunal was by what legal mechanism this factual finding would be supported. The *contra proferentem* rule applies to a document if the terms are ambiguous. There were two documents with different end dates with different parties. This rule may have applied to bring about this result.
24. The Tribunal relied on the aid to construction of contracts in **Investors Compensation Scheme** 1998 1WLR 896 HL to determine the intentions of the parties. The Tribunal proceeded on the basis that it was the intention of the respondent to be in compliance with the relevant law, accordingly it rejected its submission that the claimant was, from 1 September 2019, a full-time employee for the respondent and this superseded any previous agreements, including the apprenticeship agreement. The intention of the respondent was to provide a valid apprenticeship for a four year period and the claimant intended to work as an apprentice in that period.

Conclusion

25. In order to be legally compliant, the apprenticeship agreement should have been for four years and sit consistently with the Learning Agreement. The end date of the apprenticeship was 15 September 2020.
26. Due to the complicated nature of the case, it was not possible to deal with the latter issues of case management, a telephone case management hearing will be arranged to do so.

Employment Judge Truscott QC
Date: 28 July 2021

Sent to the parties on
Date: 29 July 2021