



EMPLOYMENT TRIBUNALS

Claimant: Ms J Taylor

Respondent: The Whitehall Partnership Ltd

Heard at: The Midlands West Employment Tribunal (remotely, via CVP)

On: 23 April 2021

Before: Employment Judge Wilkinson

Representation

Claimant: in person

Respondent: Mr Jonathan Gidney (counsel)

JUDGMENT having been given orally to the parties on **23 April 2021** and sent to the parties on **27 April 2021** 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

Introduction

1. This is a claim for unpaid wages. There have been two previous hearings before EJ Perry in September 2020 and EJ Cookson in December 2020. The case came before me for a third and final hearing.
2. The claimant is Ms Joanne Taylor, whom I shall refer to as “the claimant” and she is a litigant in person.
3. The respondent is The Whitehall Partnership Limited which I shall refer to as “the respondent”. The respondent is represented by Mr Gidney, counsel.
4. It was agreed prior to the hearing before me that:
 - a. The claimant was employee of the respondent; and

- b. The claimant's additional claims relating to dividends and expenses relating to her joint role as director (alongside Mr John Taylor) were outside of the jurisdiction of this tribunal.

The background

5. The claimant and Mr Taylor were a married couple. The respondent company was incorporated as a vehicle for the couple's financial services business. It was registered with Companies House and was governed by the Financial Conduct Authority ("the FCA"). The claimant and Mr Taylor were and remain joint directors of the respondent with shares of 50% each.
6. The parties subsequently divorced yet continued to work together and run the business together. Perhaps unsurprisingly there difficulties in their personal and professional relationship from this point.
7. Each party makes a series of cross-allegations against the other in respect of their competence and quality of work. These were not explored in evidence by either side, quite appropriately, and I make no findings either way. To do so is not probative to the decision I need to make.
8. In August 2019 the claimant ceased working for the respondent in that she stopped carrying out day to day work for the company. The circumstances surrounding this are the key subject of the dispute and I shall return to it later.
9. As I have said the claimant was and continues to be a director.
10. There are separate proceedings brought under the provisions of the Companies Act 2006, issued in the High Court by John Taylor as the petitioner, in February 2021. Both the claimant and Mr Taylor have in my view conflated the issues within those proceedings and the claimant's role of director with the issues in these proceedings and the claimant's role as an employee.

The parties' positions

11. The claimant brings a claim for unpaid wages she says are due to her from and including January 2020. She says that she never ceased to be an employee of the company just as she has not ceased to be a director.
12. The respondent denies this. It asserts that the claimant's employment ceased by mutual agreement in August 2019 or, at the very latest, in December 2019, when payments made further to a mutual agreement ended.

The issues for the tribunal

13. The issues for me to determine were helpfully set down in the Case Management Order of EJ Cookson. They are as follows:
 - a. What were the terms of the agreement between C and R in relation to pay and attendance at work?

- b. Was that agreement terminated in August 2019 or December 2019 or otherwise?
- c. Depending on the answers to those questions were unlawful deductions made from December 2019 onwards?

The law – in summary

14. The reason for these issues being identified are that to bring a claim for unpaid wages the following law is applicable:

Section 13(1) of the Employment Rights Act 1996 (“the Act”) sets out that:

‘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.”

15. The right to bring a claim to the Employment Tribunal is found in section 23 of the Act.

16. In this case the issue is whether the claimant’s employment continued after December 2019 or whether there was a mutual agreement for it to end. It is accepted by the respondent that if I find in favour of the claimant on that factual issue then the claim was likely to succeed, although there is a dispute as to remedy and the amount which is sought.

17. In light of that the hearing focused on the probative factual question and I indicated that I would determine liability in the first instance before hearing further submissions on remedy and quantum if necessary.

The agreed facts

18. I start by recording the agreed facts between the parties, which I adopt:

- a. It is agreed that as both the claimant and Mr Taylor are and were joint and equal directors and shareholders that any decision regarding ending an employment relationship (or indeed a directorship) has to be mutual.
- b. As to issue (a) identified by EJ Cookson the facts which address that question are agreed. This was confirmed in the written and oral evidence of the claimant and Mr Taylor. They are set out in the petition in the High Court proceedings to which I was referred in evidence:
 - ii. The respondent company was incorporated as a vehicle for the joint financial advice business of the claimant and Mr

Taylor;

- iii. It was split 50/50 between them in equal shares;
 - iv. Both were directors;
 - v. Both were to dedicate themselves to working full time for the company;
 - vi. Additionally (and not included in the petition) at the time that the company as formed the claimant and Mr Taylor were in a happy marriage. No thought to ending either the professional or personal relationship was given. There was no agreement and no written terms and neither party asserts that there were any implied terms given at that time.
- c. It is also agreed that the claimant did in fact receive remuneration between August 2019 and December 2019 at the rate of £711.33 per month. These payments ceased at the turn of the year.

19. The key Issue for me therefore is the answer to issue (b) identified by EJ Cookson. Both parties agree that the claim essentially succeeds or falls on my determination of this and therefore the oral evidence, the submissions and indeed my findings of fact focus upon this particular point.

The hearing

20. I key witnesses were the claimant and Mr Taylor. On the evidence before me I make the following findings and observations:

- a. As I have already stated there was no express written agreement.
- b. Both the claimant and Mr Taylor have different recollections of what was said and agreed in August 2019 and before.
- c. They clearly cannot both be right and given the passage of time since then their memories will clearly have been affected.
- d. I found both of them to be honest witnesses. Neither sought to mislead or lie to the tribunal.
- e. I have to make a decision based on wide canvass and evidence I have read and heard.

21. In coming to my decision I read the statements of the claimant and of Mr Taylor and heard evidence from both of them. I also read and heard from Mr Mummery-Smith (an accountant, on behalf of the respondent). I considered the bundle and in particular documents referred to my by each party and I considered helpful skeleton arguments provided by the claimant and by Mr Gidney.

22. The claimant was a litigant in person but she represented herself well and presented her case well.
23. The hearing took place fully remotely, by the CVP video platform. This is of course not ideal but given the ongoing restrictions caused by the Covid-19 pandemic there was no alternative. I am satisfied that the hearing was nevertheless fair. There were no issues with the technology and I ensured that all parties and the witnesses had sufficient breaks and time to collect their thoughts.

Findings of fact

24. Turning to the disputed facts, I remind myself that the standard of proof is the balance of probabilities, that is that something is more likely than not and the burden of proving any disputed fact is on the person who asserts it.
25. My findings of fact are as follows.
26. I find that both of the parties (and in respect of the respondent I refer to Mr John Taylor) have conflated the roles of director and of employee. I am satisfied that as a matter of law a person can be both. The claimant's directorship continues, and this is agreed. As I have already said, any disputes which arise from and relating to the Companies Act 2006 proceedings are not an issue for this tribunal.
27. I find that there was a mutual agreement reached in August 2019 for the claimant to cease working as an employee for the respondent company. I base this finding on the following evidence:
 - a. Firstly it is clear from the objective evidence from that time (namely the email exchanges between the parties) and from the witness evidence that I have read and heard that the claimant and Mr Taylor no longer wanted to work with each other. The relationship had clearly become untenable due to the professional and personal animosity.
 - b. Secondly in my judgment it was the claimant's suggestion that she stop working for the respondent and start to look for other work, spending 100% of her time on this. This is something which was clarified in an email exchange between the claimant and Mr Taylor on 17 and 18 August 2019.

In respect of this finding I make the following ancillary findings of fact:

- i. This was not to be additional work for the company – this was accepted by the claimant in evidence.
- ii. This was not additional work as well as work for the respondent. This is something which was suggested for the first time by the claimant in her oral evidence today when

cross-examined by Mr Gidney. Looking at the email correspondence from around that time there is nothing to suggest that this was the case.

- iii. The claimant was in fact looking for alternative work: she believed that her employment with the respondent was coming to an end and she wanted to find alternative work. This was the purpose of her search for work.
 - iv. The claimant expressed a view in the email correspondence that she did not want to carry out this task whilst sat in the office. This is clearly expressed in email correspondence and that is the reason why she stayed at home.
- c. In August 2019 an email exchange upon which both parties gave evidence shows Mr Taylor making reference to the claimant continuing to be paid until the end of December 2019. I find that this was based on an agreement which had been reached between them. I note and find that:
- i. The claimant didn't say 'no' or attempt to correct this assertion by Mr Taylor in subsequent emails.
 - ii. Likewise other contemporaneous messages between the two support this being an agreement which had been reached between the two of them, mutually:
 - 1. A text message sent by the claimant to Mr Taylor on 24 September 2019 sets out that "WE made an agreement" – the capitalisation of 'WE' being the claimant's.
 - 2. Another message sent by the claimant to Mr Taylor on 7 September 2019 refers to her trying to find a job "pronto". Again, in my judgment this is supportive of an acceptance that the employment with the respondent was coming to an end, hence the claimant's need to find a new job.
- d. The claimant did not, in fact, return to work from August 2019 at all. I accept the unchallenged written evidence of Mr Mummery-Smith that aside from logging in to the system to print some personal items relating to promotional material for an amateur dramatics production, the claimant did not carry out any work. Whilst the claimant says that she did send some emails, these were few and far between. I find that these emails were sent in furtherance of her ongoing role as a director rather than as part of the work she was doing for the benefit of the company as an employee.

- e. There was criticism is evidence of the claimant and whether she used the time between August and December 2019 to look for work purposefully. This was disputed by the claimant. Making a determination as to this would not, in my judgment, be probative to the issues before me. I therefore make no findings on this issue.

What is clear, however, is that the claimant was actively looking for alternative work (see the message I have already referred to in respect of seeking a job “pronto”) and that she became the director of two additional companies. Albeit she told me, and I accept, that one of those was a dormant jewellery company and the other was related to charitable activities. In any event I find that this clearly demonstrates somebody looking actively for a new employment role.

- f. I find as a fact that the claimant was not anticipating to return to work after 31 December 2019. This supports my primary finding that there was a mutual agreement that the parties had agreed that her employment would come to an end. I base this finding on the following:
- i. An email, sent seemingly out of the blue, from the claimant to Mr Taylor on 6 September 2019 asked: “are you making me redundant”. Mr Taylor’s response of the same date suggested surprise, noting that this had not been raised before and denying that the agreement was a redundancy issue.
 - ii. Later on 6 September 2019 the claimant sent a further email: “are you saying if I don’t find work by 31 December that I should return to work?”. In my judgment this is a crucial piece of evidence. It demonstrates an acceptance by the claimant that she was (1) looking for alternative work; and (2) that this was with the intention of her not returning to work for the respondent after 31 December 2019.
- g. Mr Gidney, in his closing submissions, invited me to find that there was an agreement and that both sides acted upon it: the claimant by searching for work, and the respondent by paying the claimant between August and December 2019. I accept that submission. Based on my findings above it follows that I agree with.
- h. The claimant also accepted in evidence that had she in fact found alternative work before the end of December 2019 she would have taken up that offer of work. I accept Mr Gidney’s submission that it is at least partly due to the fact that she was unsuccessful in her hunt for alternative employment that she brings this claim.

28. I turn briefly to deal with the claimant’s case and set out why I do not accept it. The claimant’s case before me was essentially that:

- a. She says that she became aware that Mr Taylor had commenced the process of transferring FCA registration of the respondent company to a separate company in his sole name and that by the end of December 2019 she would not have an income or a company
- a. She wanted to respond that proposed transfer, as she was worried she would lose her business. She told me that she wanted to do this from home as opposed from the office as she did not want Mr Taylor to know that she was preparing a response.
- b. She said that in those circumstances she had no choice but to agree to terms dictated by the respondent and Mr Taylor. Pausing there, the claimant did not, however, assert duress nor do the emails sent between the parties at the time to which I have already referred suggest any duress.
- c. In early 2020 and beyond the claimant sent messages to Mr Taylor saying that she was coming back in to work.
- d. There was an email sent later in 2020 by Mr Taylor in which he offered to pay the claimant.
- e. Finally, the claimant asserts that Mr Taylor tried going down multiple avenues to remove her as a director of the respondent:
 - i. He removed her name as a director from Companies House – this was accepted by Mr Taylor and the claimant’s name was re-added, albeit the claimant rightly observed this was some months later.
 - ii. He continued with his plan to transfer registration with the FCA, albeit this never came to fruition and the company remains viable; and
 - iii. The claimant asserted, for the first time in oral evidence, that the cessation of payments in December 2019 was a further attempt by Mr Taylor to remove her as a director of the company by making her bankrupt.

29. I do not accept the claimant’s case for the following reasons:

- a. The issues surrounding the FCA and the removal of her name from Companies House further conflates her role as a director with that of employee. Although the claimant repeated that she saw her role as an ‘employed director’ I remind myself that I must avoid falling into the trap of conflating the roles.

In any event the removal of the claimant from Companies House post-dates December 2019 and the FCA transfer did not come to fruition.

- b. Whatever the reason for the claimant stopping working (i.e. whatever she saw as the truth of the matter), I find that there was an agreement between the two that she would stop working for the respondent and that the payments would cease in December 2019. I do not find that there was any duress exerted.
- c. The claimant's case was that had raised with Mr Taylor that she knew his scheming regarding transfer of the FCA registration; however she was unable to say why she raised any objection to him or told him that she planned to object. When I asked her directly why she had not done this her answer was that she feared ramifications; however it was unclear what those ramifications were. The claimant is an articulate and well educated person who is able to represent her views and has in fact presented her case to both the tribunal and to other statutory bodies. I do not accept her evidence on this point.
- d. Although the claimant asserted she was intending to go back into work, she never acted upon or sought to act upon these assertions save for sending messages. They also contradict with the email sent on 6 September 2019 to which I have already referred in which she asks whether she was expected back into work in January 2020 if she did not find alternative work.
- e. When the claimant put to Mr Taylor that he had a scheme to remove her as she suggested he denied this. I found his denials persuasive and I find that the claimant's assertions are not borne out by the evidence before me insofar as this employment claim is concerned.
- f. In respect of the offer to pay I find Mr Taylor's response persuasive: he told me that he wanted to pay the claimant to "go away" as he wished to focus on the business and was conscious of unduly affecting staff morale. I accept his evidence.

Decision in respect of the issues in the case

30. Turning to the issues in the case, as identified by EJ Cookson, and taking them in turn.

31. In respect of issue one, I have already set out that the factual answer to this question was agreed between the parties. I adopt their agreed position. Importantly for my decision, I find that although the working arrangements were agreed there neither an express nor an implied agreement as to how those arrangements would or ought to come to an end.

32. Turning to issue number two; I make the following findings:

- a. There was a mutual agreement from between both the claimant and the respondent that due to difficulties in the personal and professional relationship the claimant would cease working for the business.
- b. The claimant did, in fact, cease working for the business.
- c. An agreement was reached that the claimant would spend 100% of time looking for further work away from the respondent's premises.
- d. The claimant did no further work for the company as an employee.
- e. The claimant continued to receive remuneration until the end of December 2019 as agreed.
- f. It was never envisaged that the claimant would return to working for the respondent at that time. The email of 6 September 2019 is to that end a key piece of evidence.
- g. In respect of the any issues relating to the FCA and Companies House, or the Companies Act 2006 proceedings, these are not for me to consider. I specifically make no findings either way. In my judgment nothing within those issues would in any event sufficiently cast doubt on the findings I have made and therefore it would not in any event be probative to do so.

33. It therefore follows inexorably that in respect of issue three, there were no unlawful deductions made from the claimant's wages.

Judgment

34. For those reasons it is my judgment that there were no unlawful deductions from the claimant's wages and the claim must therefore be dismissed.

Employment Judge **Wilkinson**
(signed electronically)

Date: 30 April 2021

REASONS SENT TO THE PARTIES ON

30/04/2021

FOR THE TRIBUNAL OFFICE

