



EMPLOYMENT TRIBUNALS

Claimant: Shudi Ali

Respondents: James Thorp (1)
Khalid Nasser Al-Thani (2)

Heard at: Leeds (by cvp) **On:** 03 August 2021

Before: Employment Judge Housego

Representation

Claimant: In person
Respondents: In person

JUDGMENT having been sent to the parties on 11 August 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

1. The factual background to this case is:
 - 1.1. Mr Ali worked for a bank.
 - 1.2. He knew the Respondents, as they all went to the same gym, in the UK, but not well.
 - 1.3. The 2nd Respondent is Qatari, but spends a lot of time in the UK. He owns a series of companies in Qatar.
 - 1.4. The 1st Respondent was involved in the management of those companies, for the 2nd Respondent.
 - 1.5. Mr Ali came to an arrangement with the Respondents, the nature of which is part of this claim. He left the bank. He says he was due a salary of £30,000 a year. There is nothing in writing about the relationship.

- 1.6. He went back and forth to Qatar pre-Covid. He was paid £2,500 a month, in cash, in Qatar, in Qatari reals. He converted it to sterling and paid it into his UK bank account.
 - 1.7. He was in Qatar at lockdown. He stayed there many months, in hotels. He was not paid.
 - 1.8. When he came home to the UK he claimed the salary he says he was due.
2. The judgment in this case was as follows:
1. *The Respondents employed the Claimant, and made deductions from his pay contrary to S13 of the Employment Rights Act 1996.*
 2. *Those deductions were a failure to pay salary totalling £21,250, and I order the Respondents to pay this sum to the Claimant.*
 3. *The Respondents did not provide a statutory statement of principal terms and conditions of employment.*
 4. *I order the Respondents to pay the Claimant two weeks' pay in consequence, by reason of S38 of the Employment Act 2002.*
 5. *The sum I order that the Respondents pay to the Claimant for this award is £1,153.84.*
 6. *The total the Respondents are ordered to pay to the Claimant is £22,403.84.*
 7. *The Respondents are jointly and severally liable to the Claimant.*
 8. *The award is to be paid gross, and it is for the Claimant to deal with HMRC in respect of any tax or national insurance obligations.*
3. There were several issues which required to be determined, before the merits could be considered. They were: whether the Claimant was an employee, or a worker, or self-employed. If employed, by whom? If employed was the employment within the jurisdiction of the Tribunal?
4. The 2nd Respondent's case was that the Claimant offered to do work for the 2nd Respondent's company or companies (and not for him personally), and Mr Ali would be remunerated on a commission basis, as self employed, by those companies. Any arrangement he made was with the people who ran his companies for him. It was not employment. It was not an arrangement made by or with him. The Claimant is a Dutch national, and entered Qatar as such, with a visa granted to him as a Dutch citizen, not a British citizen, arranged by the 2nd Respondent. Everything was in Qatar, work in Qatar arranged with Qataris for Qatari companies, and so the Tribunal had no jurisdiction.
5. The 1st Respondent's case was that the Claimant was someone he knew, who offered to help the 2nd Respondent with various commercial matters

involving the 2nd Respondent's companies. He, the 1st Respondent was not part of those companies. He could not be the Claimant's employer, because he had no legal contractual connection with the Claimant, and he was himself a self-employed consultant for the 2nd Respondent, not for any of the companies direct. He also said that any arrangement could not be within the jurisdiction of the Tribunal, for the same reasons as the 2nd Respondent.

6. Both said that they knew the Claimant as friends, as they all went to the same gym (in the UK) and the opportunity to work on a commission basis in Qatar for the 2nd Respondent's companies came up in discussion, and both facilitated the Claimant in having that opportunity. Anything they had done for him later, was was to help a friend, who was stuck in Qatar because of Covid.
7. I found for the Claimant, that he was employed, in the UK, to work jointly and severally for the Respondents, and the judgment resulted.
8. I record that the Respondents did not object to the arithmetic, which they accepted was correct. It was the principle to which they objected.
9. At the start of the hearing the 1st Respondent said that he was representing both Respondents, but after the Claimant had given his evidence, it became clear that each represented himself. The 1st Respondent asked questions at length of the Claimant. The 2nd Respondent asked very few questions of the Claimant, although I set out repeatedly that if he did not accept the Claimant's evidence he needed to challenge it. I record that the English of the 2nd Respondent is near perfect.
10. There was a plethora of individual documents, some 20 in all, some in bundles, some single pages. The Claimant had provided a substantial bundle of documents with sections and subsections, and not paginated sequentially. It was difficult to navigate them, but the Respondents both managed to do so following the Claimant's document structure.
11. My ex tempore judgment (I recorded it) was as follows:

"I have listened to the evidence very carefully. I have come to the following conclusions. I note that the initial email from Mr Ali states that he seeks "a basic salary". The response was "Yes, we can meet those requirements."

I have noted that the witness statement of Mr Al Khani refers to him [Mr Ali] having "a manager".

I have noted that there was no evidence at all from the Respondents about commission, even though Mr Al Thani is a 100% owner of all the companies involved.

The nationality of Mr Ali is not relevant. The fact that a Dutch national can get into the UAE more easily than a British national is not to the point. European citizens have precisely the same rights to work in the UK as have British citizens. If there is advantage in using a European passport to enter Qatar there is no reason why that should not be done, and it makes no difference to the employment status otherwise in the UK.

I have noted that Mr Ali went back and forth to Qatar frequently, until prevented from doing so by Covid-19. I note that he was based in the UK and went to work in Qatar on Qatari work as and when necessary.

There is nothing in the documentation or in the oral evidence or in the written submissions or witness statements about any commission arrangements, even though these companies are entirely owned by Mr Al Thani.

I have noted that Dr Iban said that there was no more work in November or December, but then Mr Ali was allowed to stay on and work, apparently in the same company, said to be on a commission arrangement. But again, there is no evidence as to what that commission arrangement was.

There is great force in Mr Ali's submission that the hotel was paid by them for 8 months. If indeed this was a friendship matter, as the Respondents say, then the most a friend would do is say "I can get you out if there with a flight home". It is inconceivable that they would be paying a hotel bill for 8 months at a time when they were strapped for cash. There are emails from both Respondents saying how well he was doing, early in 2020, and I do not believe this was, as Mr Al Thani says, in relation to support given by Mr Ali "as a friend" for Mr Al Thani's mental health difficulties at the time. I do not believe that Mr Thorp saying so was simply because Mr Thorp was grateful to Mr Ali for his support to Mr Al Thani. I have noted also the "You haven't paid me" at the end was not rebuffed by Mr Thorp.

All in all, I find there was an oral contract of employment for Mr Ali to work for Mr Al Thani's companies and that was for work based in the UK. It is a UK contract of employment. The question then, is who should be liable for that. Mr Thorp passes himself off as a director of the company of which Mr Iban is the CEO and says that he [Mr Thorp] is the CEO of other of Mr Al Thani's companies as and when required. Mr Thorp works full time for Mr Al Thani in his companies and that is his sole occupation. I find that Mr Ali was employed by both Mr Thorp and Mr Al Thani to work in Mr Al Thani's companies as directed by either of them. The salary was not paid for 8½ months and the figure was £30,000 a year. The sum of £21,250 is not disputed in terms of the arithmetic. I have noted that the £2,500 was paid in cash for the first 3 months which is supportive of the salary arrangement. I do not accept that Mr Ali asked for it to be paid in cash in Qatari reals, because of the cost of converting into sterling, and it was paid into bank account and so was traceable – it is unlikely he was seeking to avoid paying tax. He was simply wanting to be paid into his UK bank account. In addition, there was no contract of employment, necessarily because it was oral only. S38 of the Employment Act 2002 requires me to award the figure of 2 weeks' pay for that. £30,000 a year divided by 52 is £576.92 a week which is £1,153.84 and so I order the Respondents jointly and severally to pay to Mr Ali £22,403.84. I order that sum gross, and if and when he receives it, it is for him to account to the Inland Revenue for it."

12. In these written reasons this needs some augmentation. I found that the Claimant was jointly and severally employed by the Respondents, in a UK contract, at a salary of £30,000 a year, unpaid for 8½ months, for the reasons above and those that follow.

12.1. The initial correspondence supports Mr Ali:

12.1.1. On 08 July 2019 the 2nd Respondent emailed the Claimant *“Wish u would consider working with us in Qatar” “I think you’d like it” “Need to catch James to talk about it tho”*. The use of the word *“us”* is significant.

12.1.2. On 12 July 2019 the 1st Respondent emailed the Claimant: *“This is just one of our companies there, mainly smart tech and smart parking but also other new tech that comes our way. But the role would likely blend a cross the other companies in our holding group (such as blockchain based company, drones, legal and catering) with potential for more to be added like at the moment working on a starting a garage for repairs and tuning higher spec vehicles - we are constantly growing and adding so it’s a great time to join, current team is about 20 people across the holding. But we can discuss more next week”*.

12.1.3. From this it is clear that:

12.1.3.1. The work is described as a *“role”*, which connotes integration into the businesses.

12.1.3.2. The 1st Respondent refers to *“our companies there”*, firmly associating himself with the companies owned by the 2nd Respondent.

12.1.4. On 24 July 2010 the Claimant messaged both *“... it would be a great opportunity to join you guys ... if you can get me some help with accommodation ... and a decent basic salary ...”*. The word *“salary”* can mean only that the Claimant was expecting to be employed. The plural indicates that the Claimant regarded the arrangement as with both Respondents.

12.1.5. The 1st Respondent replied: *“...thank you for your trust and belief in us...”* Again, there is the plural, a further indication that the 1st Respondent was an integral part of the arrangement. There is no contraindicator in any of the documents before me.

12.1.6. The 2nd Respondent messaged the Claimant the same day *“I’m glad you came to that decision bro would love to have you onboard”*. This is a clear contraindicator to the 2nd Respondent’s assertion that all he did was facilitate the Claimant meeting Qatari employees to make his own arrangements with them.

12.1.7. On 26 August 2019 the 2nd Respondent again messaged the Claimant *“Rly glad ur joining us bro”*. This is further indication of the arrangement being with both Respondents (allowing for the possibility

that the “us” was referring to the whole of the businesses), and the phrase is customarily used for new employees.

- 12.2. By 16 September 2019 the Claimant was participating in the running of the 2nd Respondent’s businesses: on that day he emailed the 2nd Respondent: *“Sorry forgot to give you guys an update on the wages. Only Joseph got paid. He got paid on the 8th. So if they dont go through tomorrow they’ll get cash”*.
- 12.3. The relationship between the 1st and 2nd Respondents is not exactly as described by them. The 1st Respondent said that he is a self employed business consultant, and that he is, from time to time, retained by the 2nd Respondent personally, and that his role is to assist the 2nd Respondent in the management of some of his companies, on a project basis.
- 12.4. In fact, as was revealed in his evidence, the 1st Respondent works full time for the 2nd Respondent. He has business cards in which he is described as “CEO” of some of those companies, and he holds himself out as such as the need dictates.
- 12.5. The Claimant and the Respondents knew one another socially, but not well, through membership of the same gym. In summer 2019, through discussion, the Claimant, dissatisfied with his employment, saw the opportunity to work in the Gulf, and Mr Thorp had raised the subject with the Mr Ali. That is, Mr Ali would work across Mr Al Thani’s companies, as does Mr Thorp.
- 12.6. The arrangement between Mr Al Thani and Mr Thorp is almost a junior partnership. I do not need to decide exactly what it is. But Mr Ali asked for a *salary* of £30,000, and while there is nothing in writing to say they agreed, there is nothing to say they did not. There is the email in reply to the one from Mr Ali in which he asks for a salary, and the reply, from Mr Thorp, that he is sure they (plural) can meet that requirement. On the balance of probabilities, both Respondents employed him. I was not privy to the financial arrangements for Mr Thorp, but it seems most likely to me (and I so find) that Mr Thorp has some sort of results based remuneration: the two of them hoped that by putting Mr Ali into business opportunities on a salaried basis they could increase the amount the businesses paid.
- 12.7. Then they move on to getting him to Qatar. He was then paid £2,500 a month in cash. The Respondents sought to say that this was an advance on commission: but no commission arrangement was made. It was the salary that Mr Ali said was agreed.
- 12.8. As they say that all they were doing was to get a friend to Qatar where he would have the opportunity to agree a commission-based arrangement with the CEO of one or other of Mr Al Thani’s companies there is no sense in them paying him £2,500 a month before he had arranged anything. This means they had been so generous to a friend (but one they did not know well beforehand) that they paid for him to fly to Qatar and put him up in hotels, and paid him £2,500 a month for 3 months, to

help him have the opportunity to come to an agreement with one of Mr Al Thani's companies. It is not credible or plausible.

- 12.9. It is even less so, as Mr Al Thani said that Mr Ali had indeed subsequently come to such an agreement with Mr Iban. Even though the company of which Mr Iban is CEO is 100% owned by Mr Al Thani there was no documentation at all about such an arrangement. Nor was there any evidence from Mr Iban, or correspondence between Mr Iban and Mr Al Thani about any such arrangement. There would be if it were so, and it would be within Mr Al Thani's power to produce it. I find that this did not happen.
- 12.10. Mr Al Thani is substantially hands off in the running of his companies. Each has a CEO (the Mr Iban referred to is such a CEO). It is not at all likely that Mr Ali would be provided with a plane ticket and a hotel room in order to try to agree an arrangement with Mr Iban, without Mr Iban knowing about it in advance, and there was no evidence that he did.
- 12.11. Mr Ali went back and forth to Qatar pre- Covid. There is nothing to suggest that anyone other than Mr Al Thani and Mr Thorp organised and paid for those trips, and is accepted by them.
- 12.12. After Covid lockdown started Mr Ali stayed in Qatar, and his hotel room was paid for him, largely by Mr Al Thani. Mr Ali's ultimate return was on a plane ticket paid for by Mr Thorp after over 8 months. At one point (31 March 2020) it was Mr Thorp who paid the hotel. It is far more likely that this was because Mr Ali was an employee of Mr Thorp as well as of Mr Al Thani. Further, Mr Ali's plea to Mr Thorp for money – *"you have not paid me"* was ignored, and if it were as the Respondents say they would have replied to say that there was no pay due.
13. The evidence of Mr Al Thani, that Mr Ali was not successful, is belied by messages at the time such as on 15 February 2020 (and so about a month before lockdown) *"Hearing a lot of good about u and I'm proud of u"*.
14. The same is the case with Mr Thorp, who on 10 March 2020 messaged Mr Ali (and it reads as to an employee):
- "Yeh I'm really sorry bro, it's not been ideal last few months for many reasons, one being me not around. Had a lot going on over here so it's been difficult, I've had to keep putting it off. Inshallah I'm gonna be around by end of the week, I can keep you posted with it. Wanna say I'm hugely grateful for everything you're doing, the way you've handled everything thrown at you and I know it's been a rollercoaster with the stuff with Ehab before and financially now, but I'm really thankful you're sticking around and I think you're really shining with what your doing now bro."*
15. Mr Al Thani arranged Mr Ali's visas: see for example a WhatsApp message of 28 March 2020 to Mr Ali from Mr Al Thani:
- "I couldn't renew ur visa there was a problem with the system" "Were U able to do it ?" "Or are u leaving anyway"*

It would not be usual for a self employed consultant to have his visa arranged by his client. (I note that the message also indicates that Mr Ali might himself chose to stay or leave, but at 28 March 2020 – 5 days after lockdown – it is likely that a senior employee would make that call himself.)

16. By July 2020, Mr Ali was undertaking work for Mr Al Thani personally, trying to sell one of Mr Al Thani's cars for him (Mr Al Thani was in Qatar at this time).
17. On 25 August 2020 Mr Ali messaged Mr Thorp to say *"Today is 25th as I told you I need my money before or on 25th August. Can you please arrange this."* This is contemporaneous evidence that Mr Ali was due money. There was no rebuttal, and the reply merely temporised (he said he had been out of action and the situation was no different, and he had no new information). The messages for the months from March 2020 have a common theme that Mr Al Thani is very short of money, which accounts for the non payment.
18. On 02 September 2020 Mr Ali messaged both Respondents, separately, *"Have you got my money?"* The response from Mr Thorp was to say *"Please stop harassing me"* and temporarily to block messages from him. It was not a denial that money was due. That money was salary. Mr Thorp plainly regarded himself as liable, for otherwise he would not have felt harassed, and would have pointed Mr Ali to Mr Al Thani.
19. Mr Al Thani's reply was to ask what Mr Ali believed he was owed, and Mr Al Thani asked Mr Ali to show him the terms and the contract. Since Mr Al Thani's evidence to me is that there had been a (by then lapsed) commission only arrangement made direct with a Qatari company, this reply is damaging to Mr Al Thani's credibility about the employment issue, because it that were so he would have said so then.
20. From all this evidence, I decided that, on the balance of probabilities, a contract was made between Mr Ali and Mr Al Thani and Mr Thorp, in England, for Mr Ali to be paid £30,000 a year as a basic salary (and doubtless the hope of bonuses if he did well) to support Mr Al Thani's companies in Qatar, including going there, all expenses paid, when necessary. While there is no documentary evidence of a salary, but there is no evidence of anything else, and all the subsequent facts and messages indicate that Mr Ali's account is more likely than not to be true. Mr Ali was not attached to any company. This was a personal arrangement. Mr Thorp was an integral part of it. He was personally involved. He was not a self employed consultant to Mr Al Thani. He was integral to Mr Al Thani's business interests in Qatar. He was based in England, and there is no suggestion that his arrangement is solely Qatari, and in the same way nor was that of Mr Ali. Mr Thorp was a prime mover. He is far more than a consultant to, or employee of, Mr Al Thani. I conclude that Mr Thorp had a vested interest in Mr Ali succeeding, although it is impossible to know exactly what that arrangement was. He was not appointing Mr Ali on behalf of Mr Al Thani, but jointly with him. He would surely have benefitted personally from such success.

21. The start of the arrangement so indicates (both before the first trip to Qatar and the payment of £2,500 a month for the first 3 months). There then followed the period of over 8 months without payment with requests made by Mr Ali for payment, not refuted, and the personal payments for hotel and travel home by both the Respondents. There is the total absence of what would (if the Respondents' account were accurate) be evidence readily available from the 2nd Respondent.
22. For these reasons, I decided that Mr Ali was employed by both Respondents, in a UK contract, at £30,000 a year.

Employment Judge Housego

Date 20 September 2021