



EMPLOYMENT TRIBUNALS

Claimant: Amanda Hobbs

Respondent: South Eastern Tanker Services

Heard at: London (South) via Cloud Video Platform

On: 19 January 2022

Before: Judge of the First-tier Tribunal T Lawrence, acting as an Employment Judge

Representation

Claimant: In person

Respondent: I Wheaton of counsel, by Direct Access

JUDGMENT

1. The Claimant was not unfairly dismissed by the Respondent.

REASONS

Introduction

1. The Claimant claims that she was employed by the Respondent from 4 August 2015 at that she was paid for that employment until 12 December 2019. She claims that her contract of employment was made orally between her and Mr Gary Waddilove, the Managing Director and majority shareholder of the Respondent, who was also the Claimant's unmarried partner. The Claimant complains that she was dismissed by the Respondent and that the dismissal was unfair.
2. The Respondent denies that the Claimant was ever employed by the Respondent. The Respondent accepts that the Claimant was paid money on a weekly basis through the payroll of the Respondent, but the Respondent describes the payments as financial support of the Claimant as Mr Waddilove's

partner that was not made as compensation for any hours worked nor for any tasks performed by the Claimant for the Respondent.

The Hearing

3. The hearing was conducted on Cloud Video Platform with all attendees joining by video link.
4. I confirmed with the Claimant and Mr Wheaton that the documents for consideration were as follows:
 - 4.1. ET1 Claim Form.
 - 4.2. ET3 Response Form.
 - 4.3. ACAS Early conciliation certificate.
 - 4.4. Claimant's Schedule of Loss.
 - 4.5. Witness statement by the Claimant.
 - 4.6. Witness statement by Claire Gale.
 - 4.7. Witness statement by Mr Waddilove.
 - 4.8. Witness statement by Karen Dance.
 - 4.9. Witness statement by Michell Cooper.
 - 4.10. Schedule of pension contributions.
 - 4.11. Pension scheme members booklet.
 - 4.12. Payslip 27/04/2016.
 - 4.13. Company credit card.
 - 4.14. Company fuel card.
 - 4.15. P60 2015/2016.
 - 4.16. P11D expenses and benefits form.
 - 4.17. Letter to Claimant by Cripps Pemberton Greenish solicitors dated 16/09/2020.
 - 4.18. Summary of payments by Respondent to Claimant 2015/2016, 2016/2017, 2017/2018, 2018/2019, and 2019.
5. Oral evidence was heard from the Claimant and from Mr Waddilove.
6. Oral submissions were made by the Claimant and by Mr Wheaton.
7. I reserved judgment to follow in writing.

Issues for determination

8. The Claimant's claim depends on her ability to establish that she was employed by the Respondent. That is because (generally) only employees can claim unfair dismissal rights.

9. An employee is defined in S.230(1) of the Employment Rights Act 1996 (ERA) as 'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'. Contract of employment is in turn defined as a 'contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing' — S.230(2).
10. There is no precise and uniformly applied legal definition of a contract of employment. A contract is a promise, or set of promises, that the law will enforce. In the context of an employment contract, for example, the employee usually promises to perform certain tasks for the employer, who in turn promises to pay the employee wages or a salary. There will also usually be a range of promises made by the employer covering matters such as holiday, sick pay and working conditions. The employee may also make promises relating to subsidiary matters, such as not working for other employers. Such promises are enforceable in the sense that, if one party to the contract breaks a promise, the other party will be entitled to seek damages for that breach or, in exceptional circumstances, an order from a court preventing further breaches from taking place.
11. For a contract to exist, several conditions must be satisfied. There must be an agreement (usually consisting of an offer which is then accepted) made between two or more people, the agreement must be made with the intention of creating legal relations and the agreement must be supported by consideration — i.e., something of benefit must pass from each of the parties to the other. The individual terms of a contract must be sufficiently certain for the courts to be able to give them meaning.
12. In some cases, the doctrine of illegality operates to prevent a contract being formed.

Consideration and findings

13. The Claimant's has been consistent in her account that she started work for the Respondent on 4 August 2015. In her written statement, the Claimant stated that was employed to work directly for Mr Waddilove, who had recently purchased the business from his father and needed the extra assistance. The Claimant stated that no written statement or contract of employment was provided to her.
14. In its response to the claim, the Respondent stated that the Claimant was Mr Waddilove's former partner, until they separated in early 2019. The Respondent stated that matters deteriorated between the Claimant and Mr Waddilove, resulting in a legal dispute in which the Claimant obtained a restraining order

against Mr Waddilove, that determined that he cannot be in any close proximity of the Claimant, after which all direct contact had ceased.

15. The Respondent in its response and consistently thereafter has denied that the Claimant was ever employed by the Respondent. The Respondent accepts that the Claimant was paid money on a weekly basis through the payroll of the Respondent, but the Respondent describes the payments as financial support of the Claimant as Mr Waddilove's partner that was not made as compensation for any hours worked nor for any tasks performed by the Claimant for the Respondent. It was asserted for the Respondent in submissions by Mr Wheaton that that arrangement was illegal, in terms of the lawful administration of taxation, and that the Claimant had benefited from that illegal arrangement and should not be permitted to derive any further benefit from the arrangement.
16. It was also accepted by the Respondent that it had made payment to the Claimant of other benefits being pension contributions, premiums for private medical insurance, mobile phone charges, and the provision of a care and fuel. The payment of wages and such other benefits is indicative of contract of employment.
17. The Claimant accepted in oral evidence that she had been the partner of Mr Waddilove since 2003 until their separation in April 2019, and that she had applied for and obtained a six-month non-molestation order dated 19 May 2019, which was the same date as the restraining order. The restraining order was said to have been in force for two years. There is no reference to the existence nor to the breakdown of the personal relationship between the Claimant and Mr Waddilove in the Claimant's claim form, written statement, or any other document on which she has relied. I consider those omissions are potentially indicative of a lack of candour on the part of the Claimant.
18. In her written statement, the Claimant described the initial claimed oral contract and work for the Respondent as general administration and personal assistance to Mr Waddilove. She stated that she would be on call to do anything Mr Waddilove asked, which was mainly administration work and running of errands, and that time was not an issue. There is no additional detail in the written statement of the claimed work that was initially agreed, nor of the claimed work that was undertaken.
19. In oral evidence under cross-examination by Mr Wheaton, the Claimant was given the opportunity to expand on her account of the work she claims to have undertaken for the Respondent.
20. The Claimant stated that she had been employed by Mr Waddilove to work for him only, without the knowledge of other persons with potential influence over

the company who he was mistrustful of, including other members of his family who were shareholders in the company.

21. The Claimant stated that she had gone to the business premises only occasionally, and that nobody would have known she was working for the company.
22. When asked what work she had done for the company, the Claimant's answer was that she had done errands and sometimes paperwork, such as going through emails and bank statement to "check that things were correct" and to "check numbers". The Claimant was unable to provide any further details.
23. The Claimant stated that she had been away to Holland on one occasion on a business trip with Mr Waddilove, who had wanted to see what she thought; she did not explain what it was that Mr Waddilove had wanted to see what she thought about.
24. The Claimant claimed to have gained knowledge about the business from going on site to "see how everything worked" regarding "processes", but she confirmed that she had no knowledge of the company's invoicing procedures not of the bespoke IT system.
25. The Claimant stated that the hours she worked were 20 hours a week, or more or less than that.
26. The Claimant has provided no documentary evidence of her carrying out any work for Mr Waddilove or anyone else employed by the company.
27. The written statement by Ms Gale that was provided by the Claimant gave no details of the claimed work, which is simply described as doing "all the running around and be on hand to do anything he asked, she was like a personal assistant" and "business lunches and other business needs" paid for using a company credit card. The statement does not explain Ms Gale's relationship to the Claimant or to the Respondent company, if any. Ms Gale did not appear as a witness.
28. Mr Waddilove's written and oral evidence was consistent in denying that the Claimant had ever worked for the Respondent company, under his instructions or otherwise, and that the payments made to the Claimant and other benefits were financial support of the Claimant as Mr Waddilove's partner that was not made as compensation for any hours worked nor for any tasks performed by the Claimant for the Respondent.
29. The Respondent describes the Claimant's claim as a vindictive action following the acrimonious breakdown of a personal relationship. However, it is sufficient

in my consideration to find, as I do on consideration of the evidence in the round, that the Claimant has not discharged her burden of proving, on a balance of probability, that she ever entered into or worked under a contract of employment with the Respondent or a contract of service or apprenticeship with the Respondent.

30. I have reached that conclusion in part due to the unreasonable lack of detail in the Claimant's description of her claimed work for the Respondent in written and oral evidence. The Claimant was unrepresented, but she was asked several questions by Mr Wheaton that afforded her the opportunity to provide a reasonable level of detail of her claimed work activities, if that claim had been true, but she did not do so. The Claimant has also failed to provide any documentary evidence of the claimed work activities.
31. I have also had regard to the implausibility of the Claimant's account of being employed by Mr Waddilove to work for him only, without the knowledge of other persons with potential influence over the company who he was mistrustful of, including other members of his family who were shareholders in the company. The implausibility arises from the undisputed fact, which I find on the evidence, that Mr Waddilove was the major shareholder of 69% in the company at all relevant times, giving him a high degree of control over the company.
32. Mr Waddilove's description of an arrangement whereby payments and other benefits were provided to the Claimant through the payroll of the Respondent company in which Mr Waddilove held the controlling shares as financial support due to her position as Mr Waddilove's partner is, however, plausible in my consideration. It is unnecessary for me to comment on the legality of such an arrangement.

Conclusion

33. The Claimant was not unfairly dismissed by the Respondent.

**Judge of the First-tier Tribunal T Lawrence,
acting as an Employment Judge**

29 January 2022