



EMPLOYMENT TRIBUNALS

Claimant: BR

Respondent: AD (deceased) (1)
Eldwick Law (a firm) (2)

By CVP

On: 2 September 2022

Before: Employment Judge Martin

Representation

Claimant: Ms Munro Kerr - Counsel

Respondent: Ms McGee - Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant was employed by the first Respondent and was not employed by the second Respondent.
2. The claim against the second Respondent is dismissed.

REASONS

1. This hearing was convened to determine the Claimant's employment status and whether she was employed by either of the Respondents. There is a rule 50 order in place and the Claimant, and the First Respondent are not identified in this judgment.
2. The Tribunal heard from the Claimant and from Mr Waleed Tahirkheli a partner with the second Respondent, Ms Jenna Theresa Kruge (solicitor for second Respondent) and Ms Nahzea Hussain (Practice Manager for second Respondent). I had an agreed bundle comprising 280 pages, other additional

documents and witness statements from Mr Jon Hill and Lauren Findler for the Claimant. Mr Hill did not attend to give evidence. There was a response from the first Respondent which I considered.

3. The second Respondent denies it employed the Claimant.
4. S230 **Employment Rights Act 1996** provides that an “employee” means an individual who has entered into or works under a contract of employment. No comprehensive statutory definition of ‘employee’ exists although a body of case law has developed various tests to distinguish a ‘contract of service’ from a ‘contract for services’, none of which is conclusive. There is now an enormous diversity of working arrangements and the Tribunal when faced with the task of considering whether a claimant is an ‘employee’ must weigh all of the factors put before it. These factors will include the provisions of the contract under which the claimant worked, the extent to which and the way in which the work was controlled by the Respondent employer, whether there was a requirement for personal service and mutuality of obligations between the parties.
5. The question as to whether the Claimant is an employee is a mixture of fact and law with no individual fact being determinative of the issue.
6. S83 of the Equality Act 2010 provides that to be an employee an individual must be employed under a contract of employment or personally to do work
7. **Ready Mixed Concrete Ltd v Minister of Pensions [1968] 2 QB 497** which held that there is a three-part test to determine employment status:
 - i. Work is done in exchange for remuneration (pay, in effect)
 - ii. The individual is subject to a degree of control (such as to the how, when and where work is done); and
 - iii. The provisions of the contract suggest it is a contract of service
8. **Revenue and Customs Commissioners v Atholl House Productions Ltd [2022] EWCA Civ 501** which set out the case law re employee status in some detail and guidance on the third point in the Ready Mix Concrete case.
9. In considering this matter I have considered the relationship between the Claimant and the first Respondent, the relationship between the first Respondent and the second Respondent and the relationship between the Claimant and the second Respondent. I have confined my findings to those that are relevant to the issue I have to determine and necessary to explain my decision.

The Claimant and the first Respondent

10. The first Respondent was a solicitor and a consultant with the second Respondent. The Claimant explained how they met. Given that the second Respondent could not give evidence, the Claimant’s evidence is accepted.
11. The Claimant was a dancer at a club in London. She was also studying for

her graduate diploma in law on a part time basis. She has a young son. The Claimant met the first Respondent at the club. The first Respondent approached the Claimant and offered her work. Her case is that he offered her work at the second Respondent's firm. The work was as his personal legal secretary. The Claimant met the first Respondent on 2 and 6 February at a casino to discuss the possibility of her working for him. The Claimant had researched Eldwick law and was excited about the possibility of working for it.

12. The first Respondent acted inappropriately towards the Claimant from the beginning. The Claimant accepts that she was rather naïve. There were several inappropriate WhatsApp messages in the bundle. It is not necessary to set them out in this judgment. The Claimant was invited out to dinner with the first Respondent telling her to *"Look classy. I'm taking you to a proper place."*
13. She met the first Respondent the Playboy casino to discuss the Legal Secretary position in more detail. She made notes during the meeting. She says she was offered a base salary of £14,000 per year, plus a bonus of 10% of what she billed and received, plus 5% of what the first Respondent billed and received. The First Respondent said he charged £225 per hour. She was told not to wear shiny tights. The first Respondent told her that he saw a lot of potential in her and that her background in West End hospitality would be an asset as she would be able to entertain and work alongside high net worth clients. She was expected to pick up clients at night when they visited high end restaurants and bars.
14. She was told that in her role, the first Respondent was "God", and she was "an obedient little slave creature", he said that was the only way she would learn and achieve her potential. She was to work 4 days a week initially so she could study.
15. The Claimant had not worked as a legal secretary before and undertook courses in touch typing and audio typing paid for by the first Respondent.
16. The Claimant never went to the second Respondent's offices. She worked from home or from the first Respondent's home. She said on her first day she was on her way to the second Respondent's offices when the first Respondent called her to tell her to go to his house instead.
17. The first Respondent did not provide a contract, did not take any details for paying wages, e.g., NI number, bank accounts etc. There was no induction. Although pay had been discussed and agreed, the first Respondent did not pay the Claimant for the work she did or for expenses she incurred personally on his behalf. The Claimant also ran errands for the first Respondent on several occasions.
18. The Claimant attended the Rolls Building for a trial the first Respondent was working on to make notes. Present were various lawyers from various firms including the second Respondent. The Claimant said that Mr Tahirkheli was present. He says he was not. The Tribunal finds that he was not present. Mr Tahirkheli said he had never spoken to the Claimant either in person or on the telephone. The Claimant says he did. On balance the Tribunal

accept Mr Tahirkheli's evidence The Claimant was introduced to people as the first Respondent's personal legal secretary and not as a new employee of Eldwick.

19. The Claimant would log the work that they did for the second Respondent on time sheets. She told the Tribunal that the first Respondent had private clients in addition to those provided by the second Respondent. She later changed this to him having clients he introduced to the Second Respondent.
20. The Claimant gave details of the work she did for the first Respondent including client names and details of their cases.
21. The second Respondent ultimately went to the Claimant's home and assaulted her and her four-year-old son. He was arrested by the police.

The first and the second Respondent

22. The first Respondent was a consultant for the second Respondent. There was a consultancy agreement which was not executed however the parties worked under the terms of that agreement. Mr Tahirkheli gave evidence about the working relationship between the first and second Respondents. He is the only partner in the London office. He is actively involved in the recruitment and hiring of every employee and consultant Solicitor. Given that the first Respondent was not able to give evidence, Mr Tahirkheli's evidence was accepted. The Claimant was not privy to the relationship between them. There is a firm WhatsApp group which the Claimant was not invited to join.

23. The relevant parts of the consultancy agreement state:

Consultant: where applicable, any reference to Consultant shall include reference to any or all of his staff (including lawyers).

DUTIES, OBLIGATIONS AND WARRANTIES

3.1 During the Engagement the Consultant shall:

(a) provide the Services with all due care, skill and ability and use his best endeavours to promote the interests of Eldwick;

(b) promptly give to the Board all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services, client information or the Business of Eldwick.

3.2 If the Consultant or any staff for whose employment he is responsible is unable to provide the services under the terms of this agreement due to illness or injury, the Consultant shall immediately advise Eldwick of that fact as soon as reasonably practicable so as to ensure that clients continue to be serviced effectively.

3.3 The Consultant shall use its reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as Eldwick may require.

3.4 Unless he has been specifically authorised to do so by Eldwick in writing:

(a) the Consultant shall have no authority to incur any expenditure in the name of or for the account of Eldwick; and

(b) the Consultant shall not hold itself out as having authority to bind Eldwick.

3.8 Where the Consultant requires staff (including lawyers) beyond the basic level of administrative support provided by Eldwick, the Consultant shall:

(a) be responsible for the employment of such staff (including lawyers) (even where he is indirectly responsible for their employment via the working structure provided by Eldwick whereby for instance they need to be employed by Eldwick) and all costs associated with such employment (including recruitment costs, salary, PAYE, employer's NI, employee's NI and any costs of terminating any such employment). The Consultant agrees to fully indemnify the Company against any such costs including any liability of Eldwick in respect of any claim made by the said staff that relates to the conduct or behaviour of the Consultant;

(b) ensure that all employees are fully trained and inducted on Eldwick's policies, procedures and standards;

(c) at his own expense obtain and maintain at all times during the term of this agreement a practising certificate for all solicitors employed by him, be they employed directly or via Eldwick.

6. OTHER ACTIVITIES

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that:

(a) such activity does not cause a breach of any of the Consultant's obligations under this agreement;

(b) the Consultant shall not, and shall procure that his staff shall not, engage in any such activity if it relates to a business which is similar to or in any way competitive with or otherwise adversely affects the Business of Eldwick without the prior written consent of Eldwick.

24. The first Respondent's hourly rate was £550 per hour not £225 as he told the Claimant. Secretarial and administrative staff working for the second Respondent are paid a salary with no bonuses or commissions. As would be expected the second Respondent has a process for recruitment. Ms Hussain, the Practice Manager, would be part of any recruitment process and interview. She never met or communicated with the Claimant. The second Respondent did not have any details regarding the Claimant such as name, address, NI number, bank account and so on. They run an induction programme for new employees. The Claimant said she did not have an induction.

25. The first Respondent was provided with an email address at the second Respondent to enable him to work on clients for it. He was provided with basic administrative assistance to carry out tasks such as invoicing, photocopying, and answering and directing telephone calls. If the first Respondent required additional support then it was up to him to provide it and payment and employment was his responsibility. If he introduced staff to the second Respondent he required the authority from senior management and the person introduced would need to go through the formal recruitment process.

26. The second Respondent did not dictate where, when, or how the Claimant undertook his work.
27. Mr Tahirkheli said that he did not provide clients for the first Respondent and that all clients the first Respondent was working on were introduced by him to the firm. Mr Tahirkheli also said that the clients that the Claimant referred to in her evidence were not clients of the second Respondent so must have been the first Respondent's private clients. There was nothing in the consultancy agreement to preclude this.

The Claimant's relationship with the second Respondent

28. The Claimant was not integrated into the second Respondent. She never went to the premises, never met Mr Tahirkheli, never received a contract, or provided the normal new employee details. Her case is predicated on the first Respondent's relationship with the second Respondent.
29. It was suggested by the Claimant's counsel that the termination of the consultancy agreement was evidence of control by the second Respondent over the first, and that pointed to the first Respondent being an employee of the second and hence the Claimant an employee of the second Respondent. I disagree. The reason for the consultancy agreement coming to an end was that the first Respondent was being investigated by the Solicitors Regulation Authority, but he refused to tell the second Respondent what the investigation was about. The second Respondent was understandably concerned about its reputation and therefore severed its consultancy agreement with the first Respondent. This is not discipline in the traditional sense, and does not point to an employment relationship.
30. The response provided by the first Respondent states:
- 4) The First Respondent was at all material times operating as a sole trader and self-employed solicitor and adopts Paragraphs 2 and 3 of the Grounds of Resistance of the Second Respondent.
 - 5) It is denied that the Claimant was an employee of the First or Second Respondent or that she was a worker. The Claimant was at all material times self-employed.
31. Paragraphs 2 and 3 of the second Respondent's grounds of resistance state:
- 2. The First Respondent ("Mr Patel") was engaged by Eldwick as an independent contractor and consultant from around 15 August 2019 until 20 May 2020. Mr Patel:
 - (1) was not at any time an "employee" or "worker" of Eldwick within the meaning of: (i) section 230 of the Employment Rights Act 1996; and/ or (ii) sections 83 and 212 of the Equality Act 2010;
 - (2) was not at any time an agent of Eldwick and had no actual or ostensible authority to contract on Eldwick's behalf or to otherwise commit Eldwick to entering into legal relations with another.
 - 3. The Claimant was not at any time an "employee" or "worker" of Eldwick within the meaning of: (i) sections 43K and 230 of the Employment Rights Act 1996; (ii) sections 83

and 212 of the Equality Act 2010; (iii) section 40 of the Employment Act 2002; (iv) the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994; (v) any other statutory jurisdiction relied upon by the Claimant. The Claimant had no contractual relationship (or other relationship) with Eldwick at all.

32. Whilst the Tribunal accepts that the first Respondent could not give evidence. These paragraphs corroborate what Mr Tahirkheli said in evidence and save for reference to the Claimant being self employed, the Tribunal accepts what is said.

My conclusions

33. In the absence of evidence from the first Respondent I accept the evidence of the Claimant about how she came to work for the first Respondent, and the evidence provided by the second Respondent's witnesses. The second Respondent can have no knowledge of how the Claimant came to work for the first Respondent and the Claimant can have no knowledge of the working arrangements between the first and second Respondents.
34. I find that the first Respondent was not able to bind the second Respondent and therefore could not employ the Claimant as an employee of the second Respondent without her going through the normal recruitment process with personnel from the second Respondent. This did not happen.
- iv. Applying the tests in the Ready-Mix Concrete case, I find that work done by the Claimant was done in exchange for pay (or anticipated pay) by the first Respondent. The Claimant was subject to a significant degree of control by the first Respondent. The Second Respondent provided no such control, and the provisions of the contract (albeit an oral contract) between the Claimant and the first Respondent suggests it is a contract of service.
35. In relation to the situation between the first and second Respondents, my findings are, applying the Ready-Mix Concrete case, that work was done in exchange for pay. The second Respondent did not have control over the work of the first Respondent who could work when, how and where he wanted. The agreement is for services and not a contract of service.
36. The agreement between the first and second Respondent provides that if staff are employed by the first Respondent they are his responsibility.
37. What I have heard about the first Respondent is extraordinary. He offered the Claimant terms which do not reflect how secretarial staff are remunerated by the second Respondent and misrepresented his hourly rate. He acted entirely inappropriately towards the Claimant, and it is surprising that she did not report him to the second Respondent if she truly believed she was employed by them. Her argument that she did not want to anger him does not ring true especially after he assaulted her and her child. When she was not paid, she did not contact the second Respondent and communicated only with the first Respondent. I appreciate she says that she did not want to upset the first Respondent, however given his behaviour, and him not paying her I still find it surprising that if she thought she was employed by the second Respondent she did not raise these issues with it.

38. My finding is that the Claimant was employed by the first Respondent only. She was not employed by the second Respondent. The claim against the second Respondent is therefore dismissed.

Employment Judge Martin

Date: 05 September 2022