EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ugonna Nwachukwu	**v**	Longrich International (UK) Limited

Heard at: Cambridge **On:** 7 and 8 July 2022

Before: Employment Judge de Silva KC

Appearances

For the Claimant: Mr Ogilvy (representative)
For the Respondent: Mr O'Carroll (counsel)

JUDGMENT

1. The Claimant's claim for unlawful deduction of wages is dismissed.

2. The Claimant's claim for breach of contract is dismissed.

WRITTEN REASONS

Background and Procedural History

1. The Claimant brought proceedings against the Respondent by a Claim Form issued on 16 November 2020. The claims before the Tribunal at the Final Hearing are for breach of contract and unlawful deduction of wages.

Application for Strike Out of Adjournment

2. The hearing was originally listed for three days on 6 to 8 July 2022 but this was changed to a two-day listing on 7 and 8 July 2022. On 5 June 2022, the Claimant made a written application for the Response to be struck out, alternatively that the Final Hearing be adjourned. The basis of the application was that the bundle had been provided late by the Respondent and was hard to follow. This was considered in the morning of the first day of the hearing (7 July 2022) when neither the Claimant nor Mr Ogilvy had yet attended the hearing. An application to adjourn the case on the basis that Mr Ogilvy could not attend the beginning of the hearing had been dismissed on the papers prior to the Final Hearing.

3. Case Management Orders had been made at a Preliminary Hearing on 31 August 2021 and deadlines set down for disclosure of documents and preparation of the Final Hearing bundle. Disclosure of documents was to take place by 29 November 2021 and the Final Hearing bundle was to be prepared by the Respondent by 20 December 2021. In the usual way, the Order following the Preliminary Hearing stated that the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

4. A Deposit Order was made on the Respondent's application (a strike out application being refused) which was sent to the parties on 21 January 2022, with the deposit being required by 11 February 2022. It was paid within time by the Claimant. No steps were taken to comply with the Tribunal orders, including in relation to the bundle, while the parties waited for the Tribunal's order and then payment of the deposit.

5. The Respondent had given disclosure prior to the Preliminary Hearing of 31 August 2021. The Claimant, through her representative gave disclosure of documents on 28 March 2022, following payment of the deposit.

6. The Respondent's solicitor had a bereavement in his family, the passing of his mother, which led him to be abroad and indisposed for at least part of June 2022. On his return from abroad the bundle was prepared and sent to the Claimant apparently in draft form on 21 June 2022.

7. I accepted that the bundle was confusingly prepared, in particular the underlying documents were not in chronological order as directed by the Tribunal but simply in two sections: the Claimant's documents and the Respondent's documents. They were not even chronological within each section.

8. A strike out would be a draconian sanction in any circumstances, particularly whereas here a Deposit Order has been made. Even aside from that,

considering the prejudice to the parties, I do not consider that there is sufficient prejudice to the Claimant to justify the striking out of the claim.

9. I accept the Claimant's point that it is harder to follow these documents in the course of proceedings given the way it has been done in two separate sections and not in chronological order and I accept the Claimant's point that it is not in accordance with the Order made by the Tribunal. However, there are ultimately relatively few documents and even fewer key documents and the Claimant is not prejudiced in relation to considering those documents at this Hearing. They have been with the Claimant's side for several months - and indeed in its present format for more than two weeks. The bundle is manageable for the parties and the Tribunal, despite the way that it has been prepared.

10. For the same reasons, there are insufficient grounds to adjourn the case. This matter has been on foot for a very long period of time. For more than 18 months, the parties have had the documents and been aware the other side's case on the key issues. The parties have had this listing for several months and have prepared witness statements. The case is ready to be heard.

The Evidence at the Final Hearing

11. The Claimant provided three witness statements and gave oral evidence on the afternoon of the first day of the hearing when her representative, Mr Ogilvy, was not in attendance. She was cross-examined by Mr O'Carroll. Mrs Esther Ajala provided one written statement on behalf of the Respondent and gave oral evidence on the second day of the hearing. She was cross-examined by Mr Ogilvy.

12. On the second day of the hearing, Mr Ogilvy attended. He asked for permission to ask two questions of the Claimant which he explained went to the issue of whether a draft agreement of August 2020 had been executed. As the Respondent accepted that it had not been, it was agreed that there was no need for the questions.

13. The Claimant also asked the Tribunal to watch three recorded Zoom calls. The Respondent said that these had been covertly recorded and noted that no application had been made that they be admitted in evidence and that there were no transcripts. It nonetheless agreed that I could watch these. These were the second, eighth and ninth links at page 140 of the bundle of documents.

14. The parties made closing submissions and the tribunal handed down oral judgement and oral reasons at the final Hearing.

Findings of Fact

15. The Tribunal makes the following findings of fact. The Respondent is a company which is fully owned by Mrs Ajala. It distributes Longrich products in UK, mainly those manufactured by Biosciences China, a Chinese entity, pursuant to an agreement which was not before the Tribunal but which I accept was in the nature of a franchise agreement.

16. Other companies have a similar arrangement in other countries, including Longliqi International (Nig) Limited (**"Longliqi"**). Longliqi sometimes sells products directly to the Respondent; for example where the Respondent's order is too small for Biosciences China to fulfil or where there are supply chain issues. It also provides general help, particularly as Mrs Ajala has a historic relationship with Longliqi and knows people there but also because Longliqi is a large company where people speak English.

17. The Claimant asserted that this was a subsidiary of the Respondent in the Claim Form but there is no evidence that there is a subsidiary of the Respondent in the sense any share of it was owned by the Respondent.

18. The Claimant started providing services on 22 October 2019 and resigned on 14 August 2020. There was no written contract. In her letter of resignation, she alleged that there was an oral agreement but it was accepted that there was no oral agreement.

19. A letter of introduction and authorisation was completed by Mr Jia Dian. this was on Longliqi headed paper and it said that, at a Board meeting of that company on 2 September 2019, the Claimant was appointed as a company lawyer representing the interests of the company in the United Kingdom. Although there is reference to her being a representative in the United Kingdom, there is no reference to the Respondent company. Mr Dian was said to be President of the International Markets of the Longrich Group.

20. An email from the Claimant herself dated 12 November 2019 states that she was the Legal Representative for *"Longrich UK"*.

21. On 22 May 2020, a letter on Longliqi headed paper gave notice of a payment in the sum of £18,290.67 into the Claimant's company bank account. This was stated to be made for payments to *"the landlord of our warehouse".* The party to the lease in question was Longrich Bioscience Great Britain Limited, not the Respondent. Mrs Ajala was involved in the transaction as a company director of

the Respondent. She said that the Claimant was added to the conversation and was introduced as the legal representative for the United Kingdom. The original purpose of the lease was for the storage of products for the benefit of the Respondent.

22. A letter of authorisation dated 19 June 2020 stated that the Claimant was authorised to *"act on our behalf"* in relation to certain matters. Again this was on Longliqi headed paper. The matters related to the payment of products in the UK but there was no reference to the Respondent. It was signed by Mr Alex Jia who the Claimant explained is the same person as Mr Jia Dian. He was stated to be the Vice President of the Longrich Group, CEO International Markets.

23. On 11 July 2020, Mr Leo Cao wrote to the Claimant stating *"can we increase the quotation to £30,000 every year serving countries including UK, Italy, Germany, Ireland, Australia and part time"*. On 3 August 2020, he offered an apology on behalf of the Respondent in relation to a delivery which had been sent without checking with the purchaser.

24. In August 2020, the Claimant was in negotiations about a draft document called *"Legal Services Contract Agreement"*. This referred to her having started providing services on 4 March 2020. It identified the parties as follows: the Claimant was the "Attorney" and the counterparty was the *"Client"*. After the blank for the name and address for the Client, the words *"Longrich International"* were inserted (without any specific company being identified, e.g. there is no suffix such as "Limited").

25. Clause 9 stated that the Attorney is a Consultant and therefore an independent contractor and that neither the Attorney's employees or contract personnel are or shall be deemed the Client's employees. It was signed by the Claimant on 14 August 2020, but not signed by any other party. Clause 12 stated that *"The Attorney may assign rights and may delegate duties under this Agreement to other individuals or entities acting as a subcontractor"*,

26. The Claimant resigned by letter dated 19 August 2020. This was the first document in which the Claimant had referred to herself as an employee. The intended recipients were listed in the heading and the company was referred to as Longrich International UK which appears to be an intended reference to the Respondent.

27. At paragraph 12 she stated: *"I hereby give you notice of termination of my employment given your fundamental breach of my contract."*

28. A meeting note of 12 September 2020 refers to Mrs Ajala being appointed as a sole director of the Respondent and holding assets on behalf of the company.

The word company does not appear to be used in any precise technical sense, this is a document for a stockist and I accept what Mrs Ajala said that this was part of her message to stockists to give assurances about her.

29. On 20 October 2020, the Claimant's lawyers wrote to lawyers for Longliqi identifying Longliqi as *"your client"*. The letter was in relation to threatened Court proceedings in which remuneration would be claimed. The word remuneration is used describe what was said to have been agreed to be paid, but there is no specific assertion in this letter that the Claimant was in an employment relationship with Longliqi (or the Respondent).

Relevant Law

30. To bring a claim for unlawful deduction of wages, a claimant must prove worker status, according to a definition set out in Section 230 of the Employment Rights Act 1996. A contract claim requires the Claimant to prove employment status.

31. In either case it is agreed by the parties that a preliminary question is whether or not there was a contract between the Claimant and the Respondent. This is aligned to the first requirement of the threefold test set out in ***Readymix Concrete Limited v Minister of Pensions*** [1968] 2 QB 497 in which McKenna J stated (in the language of the time): *"A servant agrees that, in the consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master".*

32. A contract may be express or implied. If express, it might be oral or written. It may be implied from the circumstances of the case where this is necessary to explain the relationship.

Conclusions

33. The Claimant's case in the pleading was that she was employed by Longliqi which was a subsidiary of the Respondent. She was not using these words in any technical sense, for example, the definition in Section 1159 of the Companies Act 2006. What she said was that where there is one company and they open a branch in another location - but they share the same goals, the same management, the same products, the same everything - then they are a subsidiary. A subsidiary is another branch.

34. Her case before the Tribunal is that the various Longrich companies, including Longliqi, were all the same company. She repeated this formulation a number of

times. This is not correct in law: as pointed out in cross-examination, each company has a legal personality of its own. It makes no logical sense that a company can be both an entity in itself and also a part of a wider entity which is itself as a company.

35. The companies here were not a group in the sense used in company law, for example Section 1261 of the Companies Act 2006. The most that can be said is that here the companies had a commercial relationship but not necessary a legal relationship (other than some may have had a contractual relationship, in particular with Biosciences China).

36. They had loosely the same goals and the same products and it may have been that some of the managers in China or in Nigeria exerted some degree of informal influence over the people who are the directors of 'franchisee' companies. However, they are different legal entities. They are not the same company and the Claimant's analysis of different companies as being merely branches of the same company is also incorrect.

37. It is nonetheless relevant to examine what the relationship was, if any, between the Claimant and the companies here concerned, to consider whether there was an agreement. For the reasons set out below, there was not.

38. First, it is accepted by the Claimant that there was no written agreement. It was originally suggested that there was an express oral agreement, for example in paragraph 3 of the resignation letter. However, this argument was not pursued and there is no evidence of this.

39. The Claimant placed some reliance of the fact that some documents were sent by individuals who may have been officers or representatives of other Longrich/Longliqi companies, not the Respondent. However, they are not officers of the Respondent and the evidence does not support the notion that they were for example de facto or shadow directors controlling the company so that they may be taken to be in control of the Respondent. This applies even to the letter of apology from Mr Cao referred to above. What influence they might have had with the Respondent was informal and not in the nature of control. In their correspondence giving authorisation, they were providing authority for the Claimant to act but there was no reference to the Respondent in these letters. Further, the letters are written on Longliqi headed paper. Moreover, Mrs Ajala had no input into these documents.

40. The email dated 12 November 2019 referring to the Claimant as the Legal Representative for *"Longrich UK"* was set by the Claimant herself and was after the formation of the contract.

41. The letter of 11 July 2020 from Mr Cao refers to the UK, but also mentions Italy, Germany, Ireland and Australia. This points away from the Claimant being employed by the Respondent, which dealt only with the UK, and does not support her case that she was employed by the Respondent.

42. So far as the lease is concerned, the Claimant was asked to do some legal work at least in part for the benefit of the Respondent in that it concerned a warehouse that it would use. Even this does not support the case that there was a contract between the two of them. The letter in question is written on Longliqi headed paper, it is not written by an officer of the Respondent. The fact that she doing some work for the benefit of one company among companies which have some commercial relationship does not suggest that there was a contract with that first company. For example, it is perfectly logical that she could be doing work for the benefit that company pursuant to some sort of agreement or arrangement with another company.

43. The Claimant herself was involved in the drafting the agreement to formalise a relationship and collect payment and even she did not identify the Respondent in terms as a party to an agreement with her. Further, when she sought payments of legal fees for her services in the letter of October 2020 from her solicitors, she pursued not the Respondent but Longliqi.

44. Her dealings with the sole director of the Respondent were limited. She can only point to one zoom call (possibly more but still only occasional) between them. There were no day to day dealings, still less any kind of control. There are no grounds for implying an agreement. It is not necessary to do so in circumstances, particularly when there was an arrangement in hand with another company Longliqi.

45. Even had there been a contract with the Respondent, I would not have found that it was a worker or employment relationship for the following reasons:

    a. There is an absence of mutuality of obligation. In the draft contract there is a reference to being able to provide substitutes, it refers to the Attorney's 'employees' as contract personnel. Unlike in the case of ***Autoclenz v Belcher*** [2011] UKSC 41 where there might be a sham that does not reflect the reality, this was drafted substantially with the Claimant's involvement and it referred to an arrangement that had been in place since March 2020;

    b. There is an absence of control as set out above. I do not accept the Claimant's evidence that the Respondent refused the terms of

Clause 9 of the draft agreement because they wanted to assert more control. There is no evidence of this;

c. The surrounding circumstances also point away from an employment or worker relationship. She did not assert employment status until the resignation letter. Even when she pursued Longliqi in a Court claim, it was in the nature of pursuing legal fees and alleged employment status was not relied on. The documents support the case that she was providing legal services as an independent contractor and not as a worker or employee.

46. For those reasons the Claimant's claims of unlawful deduction of wages and breach of contract are dismissed.

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Employment Judge de Silva KC

Date: 30 November 2022

Sent to the parties on: 5 December 2022

For the Tribunal Office.