



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hughes

Respondent: Benson Viscometers Limited

WRITTEN REASONS

1. This is a hearing on the Claimant's application for reconsideration. The Notice of Reconsideration sent to the parties on 23rd June 2022 stated:

The Tribunal has received an application for reconsideration of the judgment sent to the parties on 8th June 2022 from the Claimant which comprises the following:

1. *Email dated 18th May 2022 attaching new evidence in the form of a job advert.*
 2. *Submissions dated 8th June 2022*
 3. *Submissions dated 10th June 2022.*
2. For this hearing I had a hearing bundle running to 1521 pages; a witness statement from the Claimant and for the Respondent a witness statement from Emma Rees, a witness statement from Lorna Chun and a witness statement from Craig Bridgland.
3. I heard oral submissions from both parties, both parties having agreed that since this was a reconsideration hearing this would be the appropriate course of action.
4. Before I heard submissions from the Claimant, he applied for a strike out of the Respondent but I indicated that I did not have any power to do so as there was a judgment and that the only power I had was to reconsider.
5. The Claimant submitted that the document at page 52 reflected the intentions of the parties and was the relevant contractual document.
6. I refer to this document at paragraph 21 of the original judgment and acknowledge that Ms Chun sent this to Mr Bridgland who sent it to the

Claimant. I record in the judgment that the Claimant was interviewed by Ms Chun.

7. I heard evidence from Ms Chun that the meeting that the Claimant had with the owners of the business was an introductory call and nothing more.
8. I found at paragraph 26 that there was no job offer of contract of employment and the Claimant was not given a contract of employment. I said that I accepted Ms Chun's evidence as this was consistent with the contractual documentation according to which the assignment was set up.
9. I found that the Claimant commenced his engagement on 13th September 2021. I outlined a summary of the assignment that was sent from Mr Bridgland to Ms Chun on 10th September. This was an umbrella contract. I had regard to a letter at p715 and 716 which had the Claimant's name c/o Liquid Friday Limited. I had regard to the method of payment which was via time sheets and I had regard to the invoice for the week ending 19th September 2021 which showed that the contractor was the Claimant c/o Liquid Friday Ltd. I had regard to the timesheet filled out on 17th September 2021 which was signed by both parties. On 30th September 2021 the Claimant's contract was terminated.
10. Today the Claimant has argued that in effect there was an agreement between himself and Ms Chun and that this was an employment contract because he did not sign anything until 30th September which was when the contract was terminated. This was not a line of argument pursued at the original hearing. He argued at the hearing originally that in effect the reality of the situation was that he was an employee and that in effect the contractual documentation was a sham.
11. I found at paragraph 42 that there was initially an agreement between Liquid Friday and the agency and latterly between the Claimant's company and the agency. I did not find that there was a contract between the Claimant or his company and the Respondent.
12. Significantly, I found at paragraph 44 that the Claimant consented to entering a contract for services with a limited company. This is the essence of what the Claimant today wishes me to reconsider.
13. Today the Claimant seeks to argue that there was a verbal contract all along that he should be an employee which was consistent with the job description at page 52. He says that the contractual documentation that I referred to in my decision was void because in effect it was terminated before it started. I have considered this point carefully. However, all my findings are that the parties conducted themselves in accordance with the contract being an umbrella contract and I see no reason to go behind this. There were timesheets. The Claimant was paid gross.
14. The Claimant was sent a letter on 24th September which he signed – paragraph 35 of judgment p.712. He was sent an assignment schedule. The

Claimant was aware that he was being set up as an umbrella contract all along. For there to be a suggestion now that this was not the reality is inconsistent with the facts I found on the evidence that I heard. I am satisfied I came to the conclusions on the evidence I heard and don't have to go behind my own judgment. It is not in the interests of justice to reconsider.

Costs Application

15. The Respondent applied for costs on 5th July 2022 and the application is in the bundle at page 1051. This was on two bases:
 - 15.1.1 On the basis that the Claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way the proceedings have been conducted.
 - 15.1.2 The claim had no reasonable prospects of success.
16. Those two grounds are in Rule 76 and mandate the Tribunal to consider whether to make a costs order when one or both of those criteria are found to exist. The tribunal then has a discretion as to whether to make a costs award.
17. The Respondent points to the hundreds of emails that were sent by the Claimant which were vexatious and abusive in nature. This increased the time that the Respondent's representative spent on dealing with the case. At that time 206 emails were sent to the Respondent's representative.
18. The Respondent also asserted that the tenor of those emails was vitriolic and abusive. I heard from Ms Chun in evidence who at paragraph 20 of her witness statement referred to some of these emails.
19. Mr Hughes was asked about one of these emails in evidence. He disputes that he wrote them and claims that he would not have done so because the police had warned him not to send anything to Haverfordwest. He said that the Respondent on the other hand lined up the police communication as a threat to him as part of the litigation and that the Respondent had engineered this and fabricated the emails.
20. I find the Claimant's explanation wholly implausible. The emails are from the Claimant's email address and are written with a view to the litigation to the Respondent's solicitor in the main. I find on balance that he did write them. Some of the examples are here:

p358 Lorna will end up unemployed with no work and no clients

7th October 2021 ' Laura has snapped psychologically long time ago'

8th October 2021'early stages of dementia or nasty, wicked and harmful. Early stages of dementia will come out in court.'

8th October 2021 the email refers to her as demented

p.482 – 5th February 2022 to solicitor, refers to Ms Chun as being schizophrenic.

‘She was exhibiting symptoms of a mental breakdown’

p. 485 – 7th February 2022 to R’s solicitor threatens to tell tribunal Ms Chun is a paranoid schizophrenic. Want you to admit she is mentally unstable. Tells solicitor this would be plastered all over the internet.

This was threatening.

496 – Email to Hannah Belton on 11th February 2022 it was said that Ms Chun was a masterclass at gaslighting or wicked psychological manipulation.

Email 22nd February 2022 at 509 Ms Chun does not sack her victims but tramples on them until their entrails come out of their body.

This was particularly disturbing.

517 email to Ms Belton 11th March ‘I intend to crush her at the hearing and project her a dark sinister machiavellian dishonest person. This was particularly disturbing.

16th March 2022 indication that the Claimant intended to skin Ms Chun alive.

This was particularly disturbing.

21. There were 403 emails post issue. I find that this was abusive and unreasonable conduct of the litigation in that the correspondence from the Claimant to the Respondent’s solicitor was, I find, directed in a threatening and often disturbing manner towards Ms Chun.
22. On 9th June 2022 (p.1026) the Claimant was put on notice that there was no need to continue emailing the Respondent’s solicitors. I find that the emails were disturbing as they were abusive and aggressive in tone. They do amount to unreasonable and abusive conduct of the proceedings. Therefore, I am to consider whether to award costs on this basis.
23. I also take into account the number of emails which is excessive and not at all proportionate and not in line with the overriding objective and for a case of this nature.
24. Did the Claimant ‘s claim have no reasonable prospects of success? The Claimant brought claims which required an employment or worker status. He argued that there was an employment contract when in fact the arrangement was governed entirely by an umbrella contract which he was aware of.

25. I consider however that this area of law is complicated. The Claimant I believe had a genuine sense of grievance about the loss of his assignment although I believe that this subsequently translated into litigation that was conducted via correspondence which was excessive and abusive. I make no award under this head.
26. I do however make an award for costs in terms of the abusive and excessive nature of the correspondence.
27. I have considered the Claimant's evidence on his means. I have a discretion to take means into account. I have not been provided with any evidence of income or savings today although the Claimant has said that he has savings of £10, 000. I have no evidence of his means in documentary form. In this case given the litigation conduct and the absence of documentary evidence on savings and income – even though the Respondent's solicitor asked for the Claimant to provide it by 1st November - I have not taken it into account. The Claimant has not been transparent in providing it before the hearing.
28. The key award I make is in respect of the nature of the correspondence and the excessive number of emails. In my finding therefore the appropriate award to be made in the circumstances is £7, 500.

Employment Judge A Frazer
Dated: 12TH January 2023

WRITTEN REASONS SENT TO THE PARTIES ON 13 January 2023

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS Mr N Roche