



EMPLOYMENT TRIBUNALS

Claimant: Mr Harjit Singh

Respondent: Bikramjit Singh
Gurmukh Singh
Manjit Singh
Balvinder Kaur
Charan Kaur
Gurdiyal Singh
Satpal Singh
Jatinder Kaur
Dara Singh
Mohanjit Singh
Members of the Management Committee of the Sri Guru
Nanak Prakash Singh Sabha (the Bristol Sikh Temple) (an
unincorporated association)

Heard at: Bristol On: 18th / 19th January 2022

Before: Employment Judge P Cadney

Representation:

Claimant: Mr Charman Singh (Lay Representative)
Respondent: Mr E McFarlane
Interpreter: Mr S Hasan

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The respondents' application to strike out the claim is dismissed;
- ii) The claimant's application to strike out the response is dismissed.

Reasons

1. By this claim the claimant brings monetary claims arising out of his engagement as a Sikh Priest at the Bristol Sikh Temple between September/October 2021 and March 2022. The primary claims are for unlawful deduction from wages in the failure to pay the national minimum wage and holiday pay. In order to succeed in these claims the claimant must be a “worker” within the meaning of the various legislative definitions. In addition the claimant brings a claim for unpaid notice pay which requires him to be an “employee”. In evidence the claimant contended that he considered himself an employee; however in his final submissions Mr Singh submitted on his behalf that he would accept worker status as the only claim that would be affected would be the claim for notice pay.
2. The respondents contend that he is neither an employee or worker, but a genuinely self-employed contractor; and that in any event on a proper analysis of his contractual hours that he has been paid in accordance with the national minimum wage regulations in any event.
3. The case comes before me primarily to determine two strike out applications.

Respondents’ Strike Out Application

4. On 30th August 2022 the respondents applied to strike out the claim and the basis that the conduct of the claimant’s representative Mr Charman Singh was scandalous within the meaning of r37(1)(b) Employment Tribunal Rules. For the reasons given orally I concluded that the threshold for striking out had been crossed in that the conduct was scandalous within the meaning of the rules; but I did not exercise my discretion to do so as a fair trial was still possible.
5. The respondent has sought full written reasons for that decision which will be provided in due course.

Claimant’s Strike Out Application

6. The claimant’s strike out application was based on the proposition that the status of a Sikh priest at the Bristol Sikh Temple had already been decided in two previous cases, in each of which he was held to be a worker. In particular the claimant contends that his case is indistinguishable from that in case 1401010/21. From that he submits either that it is an abuse of process and/or scandalous for the respondent to be permitted to advance the same response again and/or that it should be struck out as having no reasonable prospect of success.

7. The respondent submitted that on its case there are very significant factual differences between this case and 1401010/21 and that if it is correct, that it is not inevitable that the same conclusion would be reached.
8. Asset out orally in my view the decision is of persuasive authority and if the claimant's primary contention that the two cases are factual indistinguishable is upheld then it is likely, although not inevitable, that the same conclusion would be reached. However until findings of fact are made it is simply not possible to determine whether the two cases are distinguishable or not; and it is not therefore possible or proportionate to strike out the response on this basis.
9. If either party seeks full written reasons for this decision it must notify the tribunal within 14 days of the date of promulgation of this decision.

Deposit Orders

10. The directions for the hearing also permitted me to consider whether either party should be ordered to pay a deposit as a condition of being permitted to pursue the claim or response. In the circumstances I concluded for the reasons given above that it would not be appropriate to do so.

Final Hearing / Further Directions

11. The parties are agreed that the resolution of the factual issues necessary to determine the issue of employment status will essentially resolve all the factual issues in the case and that there will be no time saving in listing a further preliminary hearing to determine employment status.
12. The following directions are agreed:
 - i) The respondent shall notify the claimant and tribunal no later than Friday 3rd February 2023 (marked FAO EJ Cadney) whether it objects to the claimant's application to amend. In the event that it objects the parties are agreed that I will resolve the issue on the papers without the need for a further hearing.
 - ii) The parties shall agree and send to the tribunal no later than Friday 3rd February 2023 (marked FAO EJ Cadney):
 - a) A time estimate for the final hearing identifying the number of witnesses each party intends to call;

b) Proposed directions for the final hearing.

Employment Judge Cadney
Dated: 23 January 2023

Order sent to the Parties: 06 February 2023

FOR THE TRIBUNAL OFFICE