



EMPLOYMENT TRIBUNALS

Claimant: Joseph Johnson

Respondents: PURE GYM LIMITED
TARIQUE KALAM
CRISTIAN MITREA
AARON PEARCE
ALEX MUNN
EMI HOWARTH
CHRIS MORTON
SIMON BIRCHALL
RYAN JOHNSON
GYM CAREERS LIMITED T/A PURE GYM ACADEMY
KATE FORD
FIONA WHARMBY
CHINWE INYAMAH

Heard at: East London Hearing Centre

On: 26 July 2023

Before: Employment Judge P Housego

Representation

Claimant: In person
Respondents: (1) Kelly Gibson (for Pure Gym Ltd and its employees)
(2) Jane Southall, (for Gym Careers Ltd and its employees)

JUDGMENT

The Claims are dismissed.

REASONS

1. The Claimant claims race discrimination against all the Respondents. He ran some sessions as a martial arts instructor, at Leytonstone branch of Pure Gym Ltd. ("Pure Gym"). He wanted to be a personal trainer there (a self-employed role), and for that he needed a qualification. Pure Careers Ltd. ("the Academy") runs courses to lead to that qualification, and the Claimant enrolled on such a course. The academic part is online, the practical parts being conducted at Pure Gym's Leytonstone branch. The

other Respondents are employees of Pure Gym or of the Academy. He alleges that he was subject to a coordinated campaign of harassment by employees of both corporate Respondents, including cessation of his courses and membership.

2. The Employment Tribunal was created by statute and has power only to the extent that is set out in Acts of Parliament. The Claimant brings his claims under the Equality Act 2010. For the Tribunal to be able to hear his claims he must show that he was an employee of, or worker for, each of the corporate Respondents.

The hearing

3. The Claimant gave oral evidence first. During that evidence he stated that he had joined the Academy and its employees as Respondents to his claim because they were another part of Pure Gym and their employees had joined in with the race discrimination that he said he had suffered at Pure Gym. He said that he was never an employee or worker for the Academy because he was a student there.

4. In the light of that very clear statement there was no case for the Academy or its employees to answer and so at the conclusion of his evidence I dismissed those claims.

5. The Claimant objected to this. I explained then, and repeat now, that the Tribunal cannot rule on allegations of race discrimination raised against people or companies unless there is a working relationship between Claimant and company or individual and that relationship is by a contract of employment, or the Claimant has the status of worker as defined in statute. It is called the "Employment Tribunal" for a reason.

6. The Claimant does not understand the legal nature of employment or of "worker". His view is (to summarise) that if you work somewhere, you are a worker or employee.

7. He was adamant that, for example, a window cleaner who is in business on his own account and who comes cleans your windows once every three months, with multiple other customers, is your employee while he is at your house cleaning your windows. He thought that if a local children's play centre closed for deep cleaning every Wednesday afternoon, and used the Pure Gym's gym for those afternoons, those working at Pure Gym for the nursery would be employees of Pure Gym on those Wednesday afternoons. Plainly this is not so.

8. Two witnesses gave evidence for Pure Gym. They were Tarique Kalam, who is the manager at the Leytonstone gym, and Caroline Kellagher, of human resources.

9. There were some procedural issues. Despite multiple orders to do so, the Claimant had not filed a witness statement. An Employment Judge had made an order that he could not give evidence without the leave of the Tribunal if he had not filed a witness statement last week. He had not. The representatives of the Respondents wished to cross examine him: this brought up the issue of what he was to be cross examined on. His position was clear from the claim form. I proposed that he was asked questions, and after that if he wished to say more about facts he could do so, and if anything, new arose he could then be asked more questions about the new matter. All agreed that this was a fair and pragmatic solution.

10. In the questions asked of him the Claimant, as set out above, he gave the evidence set out above which meant that his claims against the Academy and its employees had to be dismissed. Ms Southall nevertheless remained in the hearing until its conclusion, as she was entitled to do.

11. During his evidence on occasion, it was necessary for me to remind the Claimant that this was not a hearing to explore the merits of his claim but limited to the specific issue of whether he could bring a claim at all. For that to be the case he had to show that he was an employee or worker, as defined for the purposes of the Equality Act 2010. The Claimant did not take kindly to that indication, which I put courteously. He regarded it as “*very concerning*” that I was limiting what he might say in evidence. I asked him why he felt it was “*very concerning*” and what the basis for that concern might be, for all that I was doing was to try to ensure that evidence was given only about the issue for me to determine – was he an employee or a worker for Pure Gym or the Academy. He did not respond other than to repeat that he was “*very concerned*”.

12. During his evidence I offered the Claimant breaks. He did not wish to avail himself of the opportunity.

13. At the conclusion of his evidence, as set out above, I dismissed the claims against the Academy and its employees and asked Pure Gym to call its witnesses.

14. The Claimant said that he had not received any documents or the witness statements. I had them sent again to the email address he used to both send and receive emails to and from the Tribunal and the Respondents. He said they were not received.

15. I read out loud the entirety of the witness statement of Mr Kalam. I checked with the Claimant that he fully understood it and was not taken by surprise by any of the content. He was not and was content to proceed.

16. By now it was towards lunchtime, and so there was a break of an hour. Before the break started, I asked Pure Gym’s solicitor to email the witness statements to the Claimant again. I checked the email address to which they should be sent, and they were sent to the correct address. They were sent also to me, and I received them, and from that email it was apparent that they had also been sent to the Claimant, using the email address which he used to correspond with the Tribunal and the Respondents. There had been multiple emails successfully sent to and from that email address. The witness statements are not long documents.

17. At start of the afternoon the Claimant said they had still not been received by him. I asked him to check his junk email (although no other emails had gone there) but he said they were not there either. Nevertheless, having heard the witness statement of Mr Kalam from my reading of it he was content to proceed.

18. The Claimant then cross-examined Mr Kalam. The Claimant repeatedly asked questions about the allegations he was making which could have had no bearing on the issue I had to determine, which was whether he was an employee or worker for Pure Gym. The Claimant then objected that he was even more concerned about my conduct of the hearing as, he said, I had given the Respondents a free hand when he was cross examined, but I was interrupting him. I explained that I was trying to help him, for I was not making findings of fact about what he said had happened to him, but only deciding whether he was an employee or worker of Pure Gym.

19. The Claimant continued to ask irrelevant questions and I pointed this out. After he said for a second time that he was very concerned at my interruption of his cross examination of Mr Kalam, I said that it was up to him whether he wanted my help in focussing on the relevant issues. I said that from his objection it was clear he did not want that help, and so, within reason, he could ask any question he wished, relevant or not. I asked how long he thought he would like. He objected to being time limited. I pointed out that I had an obligation to case manage the hearing so that it concluded in one day. He asked for a further half an hour, which I allowed him. I said that if he changed his mind and wanted assistance with how he could ask relevant questions I would assist him. He did not so request. He ended his cross examination in 20 minutes, without interruption from me, save on one occasion when his questioning was tending towards harassment of Mr Kalam about matters to do with his claims.

20. I then read in full the witness statement of Caroline Kellagher and the Claimant again said that he fully understood her witness statement and was ready to cross examine her, which he did.

21. As I had dismissed the claims against the Academy the witnesses, they had tendered did not need to give evidence.

22. I then accorded the parties a 15-minute break before submissions. Ms Gibson had prepared written submissions. At the start of the break Ms Gibson emailed them to me and to the Claimant.

23. I received them, but on resumption the Claimant said that he had not received them. They were of some 10 pages. I summarised them for the Claimant, in simple English and omitting the reference to cases which would not have helped the Claimant follow the thrust of the submissions. Ms Gibson added to her written submissions orally, but not at length.

24. I then heard the Claimant's submissions. These were as follows.

24.1. He was here to say that he was an employee of Pure Gym. The law clearly stated that an employer can't create situation where employees can be put in a worse situation. His rights included not being discriminated at work for a protected characteristic.

24.2. If he made such a complaint, he had the right not to be victimised.

24.3. This applied to him as set out in the emails in his bundle of documents at pages 1-6.

24.4. It could be seen even without any written contract – Mr Kalam set out his terms of engagement from page 1-6 of his bundle of documents.

24.5. The list of issues was made available in advance - how he was an employee and how his rights were abused and how the Academy joined in.

24.6. In regard to statements by the Respondent it was clear to see that they rely on trying to over complicate definitions – but I should look at the rule

of law. Even with all the Respondent said, even in non-traditional contract he was clearly an employee of Pure Gym. That he had no uniform or contract did not change that.

- 24.7. Even without any written agreement he could acquire rights. He had rights as a voluntary worker, or as an external contractor or combination of both gave him rights.
- 24.8. But he was an employee and with rights and Pure Gym wanted to declassify him so then there was no way to deal with blatant race discrimination by Tarique Kalam and others.
- 24.9. Missing elements were neither here nor there – he did not need a traditional route. Pure Gym were trying to mislead the tribunal. They should have given straight answers when situation was clear.
- 24.10. For example, when he was cancelled by Pure Gym for low numbers there was ample interest in his martial arts courses as Tarique Kalam had come after him saying that he (the Claimant) was still training people after the courses had been cancelled.
- 24.11. Volunteers could be employees. It was not required that he be paid to be an employee of Pure Gym.
- 24.12. Tarique Kalam had said that he wanted to make the courses successful, but he sabotaged the whole operation by offering lots of dates then withdrawing them. This was because he wanted to discrimination against him racially. Tarique Kalam continued to attack him in gym and got other members of staff involved. It was undeniable that was why they were so keen to change his status.
- 24.13. All the Respondent said had no effect on whether he was an employee. It was a non-traditional employment. The emails showed how he acquired that status.
- 24.14. Everything he pointed out was clear from his bundle of documents and it was misleading to say otherwise.

Judgment

25. I delivered an extempore judgment. The Claimant repeatedly interrupted me saying that it was all lies and that I was biased. I pointed out that this was not a discussion, but a judgment, and that my responsibility was to assess the evidence and make findings of fact on the balance of probabilities, and that was what I was doing. This did not stop the Claimant interrupting.

26. At the conclusion of my judgment, when I informed the Claimant that I had found that he was not an employee of Pure Gym, nor a worker with them, and for that reason I dismissed his claims, the Claimant began shouting at the screen, and wagging his finger at me, saying that I was a disgrace, that I was a racist, and that he would be making a formal complaint against me. He then disconnected himself from the hearing.

27. Neither Respondent made any application for costs.

28. I set out the substance of my judgment below.

Facts found

29. The Claimant is a martial arts instructor.

30. He was a member of Pure Gym at Ilford.

31. He wanted to run courses in martial arts, partly for money and partly for community reasons as a form of voluntary work.

32. He wanted to do this at the Leytonstone gym run by Pure Gym.

33. Pure Gym have employed Fitness Coaches, usually working 12 hours a week.

34. Most Fitness Coaches become Personal Trainers in tandem with their employment.

35. Personal Trainers are self-employed, and work under a licence agreement, not a contract of employment. They can work for other people or for themselves outside Pure Gym. They pay a modest fee for the licence.

36. To be a Personal Trainer a person must have a Level 3 qualification and have professional indemnity insurance in their own names for £5m.

37. The Claimant did not have a Level 3 qualification.

38. The Academy is a company linked to Pure Gym and provides training to enable people to acquire the Level 3 qualification and so become Personal Trainers. The classroom training is virtual. The practical element is carried out at the gym, is videoed and assessed by the Academy.

39. Pure Gym offer standard fitness courses like *"legs bums and tums"*. These are run by Fitness Coaches. Fitness Coaches are paid a salary, whether or not they run courses. If they are not running courses they will do inductions of new members, cleaning or other work.

40. Personal Trainers offer Zumba, pilates or yoga. Their courses are booked by members via the Pure Gym booking system. The Personal Trainer charges the gym members a fee for the session, usually £2 or £4 a time. The Personal Trainer keeps that money.

41. Sometimes external people are permitted to carry out training sessions at the gym. Pure Gym does not charge such instructors, who are able to keep the fees they are paid for those sessions. This is because member retention is higher for those who attend courses that for those who do not. The result is that the external instructor gets free use of the studio to run the course, and Pure Gym hopes to have more satisfied and so longer-term members.

42. The availability of Pure Gym's studio to external instructors will always be limited, because their priority will be their own classes followed by those of the Personal Trainers.

43. The Claimant knew Tarique Kalam from his membership at the Ilford gym. There was an exchange of emails about the Claimant's wish to run courses. This was at pages 1-6 of the Claimant's bundle of documents (he had prepared his own file). These emails do not give any indication of employment. They discuss possible slots for the Claimant to give classes. Tarique Kalam suggested multiple slots, which later he reduced to Sunday 12:15-13:15, on the basis that other users had taken the other slots. The Claimant did not like this, because, he said, he had some bookings for some of them. At this point he had not told Tarique Kalam that he accepted any of the slots. Tarique Kalam says (and I accept) that he was expecting the Claimant to pick one or two of them. The Claimant then accepted the Sunday slot that was offered to him. Tarique Kalam asked for evidence of the Claimant's martial arts qualification and of PI cover of £1m, which the Claimant provided.

44. The Claimant's PI cover is for "Joseph Johnson Martial Arts Association".

45. The Claimant ran his sessions on Sundays, after the gym would otherwise close and there might then be no-one save the Claimant and those attending his courses in the building.

46. The Claimant made no formal application for employment.

47. The Claimant was not interviewed by anyone, as is the standard procedure for Pure Gym's employees.

48. The Claimant was not placed on the human resources system "Dayforce" for employees.

49. The Claimant was given an induction as a student, but not as an employee.

50. Tarique Kalam agreed that the Claimant could display in the gym two posters with details of his courses, and a banner in the studio while he was actually running the courses. There was a place for him to display his business cards.

51. The Claimant was to provide the equipment necessary to run the courses. He had to bring it with him every time and take it away again.

52. There are staff lockers. The Claimant was not allocated one.

53. There is a staff kitchen. It has a numbered code entry. The Claimant was not given it (other than that he told a member of staff that Tarique Kalam had agreed that he should have it, and on the strength of that gained access to the kitchen on one occasion).

54. The Claimant asked if he could put storage containers in the yard to keep equipment in, and in principle there was no objection to this, but the arrangement ended before anything was done about this.

55. The Claimant had his own online booking system. He declined to give details of those who were booking courses with him, saying that there were GDPR issues with doing so. Tarique Kalam accepted this.

56. The Claimant decided how much to charge people who attended his courses. He said that he was doing this as voluntary work and was not charging, but when his access was stopped, he said that he had made a loss of £1,200. In oral evidence he said that he asked for a contribution of £5 a session, but not everyone paid. Whatever the truth of the matter, it is not in doubt that the Claimant had complete control over whether there was a charge for his courses, and if there was, how much that charge would be, and he kept whatever money was paid, and Pure Gym had no visibility of the finances of the Claimant's courses.

57. Pure Gym was not, under any circumstances, going to receive any payment for the courses run by the Claimant.

58. The Claimant was not, under any circumstances, going to be paid by Pure Gym for running the courses.

59. Pure Gym's Fitness Coaches and Personal Trainers wear Pure Gym uniforms. The Claimant did not wear such a uniform. He was not asked to, and did not ask to, wear such a uniform.

60. The Claimant was not obliged to run any minimum number of sessions. The limit of the connection was that he might be allocated slots during which he could have use of the studio to run martial arts courses for his own benefit, to people who organised that only through him, and he would get those slots free of cost.

61. If he had wanted, he could have got someone else to run his courses, provided only that they had the relevant martial arts qualification and were covered by insurance.

62. In his own emails (page 35) he described himself as "a freelance employee". This is an oxymoron, but the tenor of the arrangement is, in the words of the Claimant, as follows:

"Around January 2022 and February 2022, I asked Leytonstone manager Tarique Kalam if it was possible to run Martial arts sessions when I have the time to organise them as:

- 1. I'm a qualified Martial arts instructor who constantly mentors' people through training programmes.*
- 2. It would be nice to be able to mentor people with martial arts at the gym I use regularly.*

This request was under no obligation, and in fact was just an enquiry. Tarique responded with yes and even wanted to offer me times there and then. At which point I made it clear that:

- 1. I was going to take a few months to ensure I start properly; in a way that wasn't an inconvenience to him or any personal trainers at the gym.*

Cases Numbers: 3204227/2022, 3204228/2022, 3204780/2022, 3204638/2022, 3204970/2022, 3205762/2022 and 3200445/2023

2. *That Tarique should only allocate time slots that didn't have any negative effect on personal trainers who already worked there. After this discussion Tarique offered me the following time slots as a free-lance employee."*

63. The Claimant could offer whatever course he wanted; there was no control by Pure Gym over the course he offered, other than they were not to involve contact between those attending.

64. When the Claimant raised a grievance about the lack of sessions and the ending of the arrangement, he sent it to "*member services*" and not to human resources.

65. There is nothing in writing to indicate a formal arrangement of worker or employee. The Claimant does not dispute this but says it must be inferred from the emails passing between them and by reason of what he did.

66. In September 2022 the Claimant obtained his Level 3 qualification through the Academy. He claimed to be an employee between 06 June 2022 and 04 July 2022. The Claimant did not dispute that he required the Level 3 certification in order to be a Personal Trainer, and as he did not obtain that until some months after he ceased to run sessions, he could not have been a Personal Trainer (and he does not say that he was).

67. The facts involving suspension and restoration of the Claimant's Pure Gym membership, and the length of time it took for him to obtain the Level 3 certificate are not relevant to the issue I have to determine, and so I do not deal with them in this judgment.

Conclusions

68. There are three matters that might indicate a work relationship. They are the fact that the Claimant did not have to pay for the use of the studio, that he was told that there was to be no contact in his sessions, and that there was no-one else in the gym when he ran his sessions.

69. The first is adequately explained by Pure Gym saying that they encourage a wide range of courses, as members who attend courses tend to remain members. It is in Pure Gym's interests to have the studio used by external instructors for courses they do not run themselves if they do not have a use for it at the time.

70. The second is explained by the fact that the Respondent runs gyms, not boxing or martial arts centres.

71. The third might indicate an official connection, and I take it into account.

72. Having taken this into account, the great preponderance of fact clearly points to the Claimant not being either an employee of Pure Gym or a worker for them. If the Claimant was a "*volunteer*" in the sense of not being paid and running his courses for altruistic reasons (if this was so – I make no finding of fact that it was) that does not make him a worker for or employee of Pure Gym. This is because Pure Gym did not know if he was charging or not. It was up to him. They did not know who was attending

Cases Numbers: 3204227/2022, 3204228/2022, 3204780/2022, 3204638/2022, 3204970/2022, 3205762/2022 and 3200445/2023

his courses, and they had nothing to do with the booking of sessions. He displayed his own business cards and promotional material. He went through none of the practical things an employee would undertake. Even the self-employed Personal Trainers wear Pure Gym uniform when delivering sessions. He had no access to the staff kitchen and no staff locker. He brought and took away his own equipment.

73. In summary, Pure Gym allowed the Claimant to use their studio for the purposes of his own business without payment when they did not need it, in the hope that this would help with member satisfaction, engagement and retention.

74. As he was neither an employee or a worker for Pure Gym, he cannot bring a claim against them under the Equality Act 2010 for race discrimination, and accordingly I am obliged to dismiss his remaining claims.

**Employment Judge P Housego
Date: 26 July 2023**