



EMPLOYMENT TRIBUNALS

Mr. John Joseph

V

(i) Kuklous Healthcare Limited and (ii)
Mr Ulku Qureshi

Claimant

Respondents

Heard at: Watford Employment
Tribunal

On: 16 October 2023

Before: Employment Judge Daley

Appearances:

For the claimant: Mr John Joseph –In person

For the respondents: Ms Dola Ajibade - representative

WRITTEN DECISION

On a Preliminary Hearing

(I) The claimant's claim for unfair dismissal is dismissed for want of jurisdiction.

REASONS

The claim

1. The claimant's claim was for unfair dismissal, and unlawful deduction of wages, for unpaid annual leave. The claimant's claim was brought under Section 13 (1) and Section 94 of the Employment Rights Act 1996.
2. The claimant was employed as the Registered Manager and The Nominated Individual for Kuklous Healthcare Limited.
3. The first respondent provided community-based, domiciliary adult social care services. The Second respondent Mr Qureshi is the director of Kuklous Healthcare limited.
4. The claimant was appointed on or about 1 April 2021 as registered manager and nominated individual, he was dismissed on 8 February 2023.
5. The claimant's claim is that his dismissal was unfair; he also asserts that his employment began earlier than 1 April 2021.
6. The respondent denied the claimant's claim in its entirety asserting that he was not an employee and also in the alternative if he was the Tribunal lacked jurisdiction as he had not met the two years' qualifying period to bring a claim.

The procedural history

7. The claimant applied for ACAS early conciliation. On 16 February 2023 the early conciliation period ended on 17.02.23 and a certificate was granted.
8. The claimant issued his ET 1 on 17 February 2023. A Notice of claim, from the Tribunal provided that the Respondent submit a response.
9. The Respondent filed a response on 28 March 2023.
10. On June 2023 the Tribunal ordered that the matter be listed for a preliminary hearing to determine (i) Whether the claimant was an employee of the claimant. (2) If so whether Mr Joseph had two years of service, or in the alternative lacked jurisdiction to bring this claim.
11. The matter was listed for a preliminary hearing on 15 October 2023 to determine the issues below.

The Issues

12. The issues have been set out as I understood them to be, and which I consider relevant, in reaching this decision.
 - Whether the claimant was an employee;
 - Whether the claimant may bring unfair dismissal proceedings. By virtue of having 2 years length of service;

- Whether, if the claimant was not an employee, the claimant was a worker in accordance with Section 13 of the Employment Rights Act 1996.

The Hearing

Attendance

13. The hearing was held at Wafford Employment Tribunal. The claimant Mr John Joseph was in attendance supported by Mr Holder. Ms Dola Ajibade representative was in attendance on behalf of the first and second respondent. Mr Quereshi the second respondent and Mrs Quereshi were also in attendance.

The Background

14. The Claimant was employed as the registered manager Registered by the Care Quality Commission (“CQC”) and the nominated individual (registered by the CQC), his application to the CQC stated that he worked with the company from March 2021.
15. Dr Quereshi, the second respondent, is the director of the company. The company provides community-based adult social care services in the community (Domiciliary Care Services.)
16. The terms of the claimant’s employment were that he received a salary of £35,000 PA. An oral term of his contract provided that he would receive a 5% share of the company. However, it was a term of the contract that he would forfeit or lose his shares if he left the company. It was accepted that he received additional or separate remuneration from 23 February 2021. The claimant’s case was that he was employed from that period, whereas the respondent’s case was that this remuneration was paid for consultancy prior to the company being established.
17. There was a dispute as to whether the claimant resigned or was dismissed and what circumstances led to the claimant’s contract ending.

The Evidence

18. The Tribunal was provided with a bundle of 168 pages from the first and second respondent together with additional documents from the claimant. The claimant provided an unpaginated bundle with a set out separate attachments, he also provided an additional bundle in a similar format including a witness statement from himself and Mr Holder. The documents provided by the claimant included the heads of contract, What’s App messages and bank statements from the claimant’s HSBC bank account and an application to the Care Standards Commission to become registered as manager by the CQC. Together with a witness statement from Mr Joseph.

19. In his statement, Mr Joseph asserted that he was employed by the first respondent from 27 January 2021, he stated that his role was to set up the respondent company, by applying for CQC registration, recruiting staff and promoting the company.
20. His evidence was that he had met the second respondent Mr Quereshi whilst employed as the registered manager of supported living accommodation and that the second respondent worked with patients there as a psychiatrist. He had been invited to work for the second respondent who had expressed an interest in his undertaking the role. The claimant's evidence was that Mr Quereshi had been impressed with his management of the supported accommodation.
21. In his evidence he set out that although he was undertaking work for the second respondent, he remained employed by his previous employer up until 25 March 2021
22. He told me that on 31 March 2021 he was paid £5000.00 for IT. The respondent's case was that this and other earlier payments to the claimant were made for equipment and expenses for setting up the company. On 8 June 2022, the claimant resigned for the first time. I find that his resignation was not accepted by the respondents and the claimant continued to work for the respondent and remained the nominated individual with the respondent's company.
23. Mr Joseph in his witness statement set out that he was concerned that the second respondent employed his (the second respondent's) relative to work in the office. The claimant alleges that he had concerns about the second respondent employing family members who were not qualified or who lacked DAB checks.
24. In his witness statement he set out that he made a disclosure to the CQC and Brent Safeguarding board on 10 January 2023, and resigned on that date, giving notice with effect from 15 March 2023. The claimant set out that he had 4.5 weeks holiday and he indicated that he intended to take his holiday starting on 5 January 2023. By email he was asked to cancel his holiday to hand over his work. He declined to cancel his leave. On 8 February 2023, he received a letter from the respondent that the respondent was terminating his contract with immediate effect.
25. On 15 February 2023, the claimant was expected to be paid his final salary and holiday pay in the sum of £2917.15 and an additional 3.5 weeks; holiday pay. He was informed by the second respondent that this sum would not be paid as he had breached the terms of his contract.
26. His claim was for unfair dismissal, breach of contract and non-payment of wages.
27. The claimant provided copies of his bank statement to support his claim that he had been paid wages prior to 1 April 2021.
28. Ms Ajibade set out on behalf of the respondents the respondents' joint submission that the claimant was a self-employed consultant and that he had undertaken work in connection with setting up the company on behalf of the respondents and that any sums were paid they were paid in connection with this consultancy and also for equipment. She further submitted that if the tribunal found that the claimant was an

employee the tribunal did not have jurisdiction as the claimant had worked for the respondents for less than the required two years. She submitted that there was no evidence that the claimant had worked for the respondent for 2 years.

The Law and the issues

29. Complaints to [employment tribunal].

30. 23 (1) A worker may present a complaint to an [employment tribunal] (a) that his employer has made a deduction from his wages in contravention of that section as it applies by virtue of section 18(2) Section n employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

Section 108 Qualifying periods of employment

Section 94 does not apply to the dismissal of an employee unless he is employed for a period of not less than [two years ending with the effective date of termination.

Was the claimant a worker within the meaning of Section 23 of the Employment Rights Act 1996.

31. The relevant terms of the claimant employment are set out in the heads of engagement at page 159 of the bundle and was dated 23.02.21. In reaching my decision I considered paragraphs 2, 3 and 7 of the heads of engagement (although I have not cited the specific terms), At paragraph 10 of the heads of engagement it states-:” ...It is your responsibility, and you testify that there is no conflict of interest with your current employer”.

32. The agreement further stated that the full employment/ consultancy contract of will be sent to you in due course no other terms were provided. It was submitted by the claimant that he was in fact an employee rather than a consultant and that the respondent had control over how and when he worked.

33. Ms Ajibade on behalf of the respondent submits that the claimant was a consultant and that as such he was not a worker within the meaning of The Act. I am satisfied that the claimant although referred to as a consultant was an employee. I was satisfied that although the respondent referred to the claimant, Mr Joseph as an employee he was previously granted and took annual leave for which he was paid. That he was required to carry out the duties and responsibilities as a registered manager (a role required by the Care Quality Commission) As an employee. Accordingly, I am satisfied that the claimant was an employee within the meaning of the act and is entitled, subject to the merits to bring a claim for non-payment of wages.

Whether the claimant has jurisdiction to bring unfair dismissal proceedings. By virtue of having 2 years length of service

34. I have considered the documents before me, in his application before the Care Quality Commission the claimant provided information that he was an employee of Care Advocates Limited up until March 2021, given that this information was provided to the CQC, I have no reason to look behind it. I am satisfied that the Claimant was employed by the respondent, sometime after March 2021. However, I heard and accepted evidence that work was undertaken by the claimant for the respondent prior to these dates. This

included various aspects of setting up the company such as arranging the office registering with the CQC and putting policies together. As a result he was remunerated for this on 31 March 2021, and as such I find that prior to his employment for a limited time he was a consultant who assisted to set up the company and this included some assessment of clients.

35. The claimant was due to start his employment on 1 April however he started earlier due to the previous post holder leaving. I have considered the evidence that the claimant was carrying out assessments by 28 February 2021. Accordingly I have determined that although the claimant was carrying out such work, he remained employed by Care Advocates Limited until March 2021.
36. Although there was no formal start date, I find that his start date did not occur until the beginning of March 2021. The claimant was dismissed on 8 February 2023 with immediate effect. The claimant's claim was for unfair dismissal, accordingly, as he does not have the required 2 years' service, I find that the Tribunal does not have the jurisdiction to hear the claim brought for unfair dismissal.
37. I have noted that the claimant's claim was not for an automatically unfair dismissal for a protected disclosure. Accordingly his claim for unfair dismissal is dismissed for want of jurisdiction.

Employment Judge Daley

Date: 11 March 2024

Sent to the parties on:
28 March 2024

For Secretary of the Tribunals