EMPLOYMENT TRIBUNALS

Claimant: Mr S Sutton

Respondent: Mr David Evans (as a representative of all members of the Labour Party save for the claimant)

Heard at: Manchester Employment Tribunal (by CVP)

On: 22 March 2024

Before: Employment Judge Dunlop

Representation

Claimant: In person
Respondent: Mr T Gillie (Counsel)

JUDGMENT having been sent to the parties on 2 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and Background

1. Mr Sutton wished to stand as a Labour Party candidate for the parliamentary constituency of Bolton West in the general election which is expected to take place sometime later this year. He was not selected for candidacy and, indeed, his application was not progressed to the stage of being invited for interview by the selection panel. Mr Sutton asserts that the reason for this was due to unlawful discrimination, on the basis that he is disabled, and/or that he is a carer for a disabled relative.

2. Mr Sutton presented a claim to the Employment Tribunal, advancing a complaint broadly as I have outlined, using the Employment Tribunal claim form ("the ET1 form") which was received by the Tribunal on 25 September 2023. The claim was brought against "The Labour Party".

3. A response, and grounds of resistance, was presented on 7 February 2024. This was out of time, and Employment Judge Slater extended time for the presentation of the response on the application of the respondent.

4. A preliminary point taken in the grounds of resistance concerned the correct identity of the respondent. It was stated that:
   At all material times the Respondent has been a political party and formed His Majesty's Official Opposition in Parliament. The Labour Party is an unincorporated association with no legal personality. There is no legal person known as 'The Labour Party' and the correct respondent to this claim is the General Secretary of the Labour Party in a representative capacity.

5. At the start of this hearing, the Tribunal's file still recorded that the respondent to the claim was "The Labour Party". With the claimant's consent, I amended the name to "Mr David Evans (as a representative of all members of the Labour Party save for the claimant)" as that appears to be the correct respondent for the reasons given in the response. (Mr Evans is the current General Secretary of the Labour Party.)

6. Alongside its response to the claim, the respondent submitted an application to strike out the claim put on the basis of Rule 37(1)(a) on the grounds that the claim was "scandalous, being an abuse of process" and/or that it had "no reasonable prospect of success". The application went on to elaborate the respondent's contention that the tribunal had no jurisdiction to hear these claims because they did not fall within part five of the Equality Act 2010.

7. By letter dated 15 Feb 2024, written on the instruction of Employment Judge Holmes, the Tribunal listed this preliminary hearing to determine the respondent's application.

Today's Hearing

8. The hearing took place by CVP with no significant connection difficulties or technological problems. The respondent had prepared a 134-page electronic bundle of documents which Mr Sutton had had sight of in advance of the hearing, and which was broadly agreed. The bundle included both the respondent's application (which was detailed) and Mr Sutton's written response to it, entitled submissions. Those submissions included legal references, mostly to parts of IDS Employment Law Handbooks.

9. In addition to the material contained in the bundle, Mr Gillie also provided a written skeleton argument and an authorities bundle containing five case reports alongside an excerpt from the Representation of the People Act 1983. Those had been provided to Mr Sutton a few days before the hearing.

10. Mr Sutton told me that a copy of the Labour Party Rule Book should also have been included in the bundle. We established that this document is easily accessible on the internet and that it is a document with which Mr Gillie is familiar. In those circumstances, he raised no objection to Mr Sutton referring to the rule book in the course of the hearing. As it transpired both parties made reference to various sections of that document.

11. I discussed with the parties how I intended to approach the determination. Mr Sutton explained that he relied on a "Candidate Contract" he had entered

into with the party from around 2018. He contended that this was a contract personally to do work and that he was therefore in the employment of the Labour Party from 2018 onwards in accordance with the definition of employment in s.83(2) Equality Act 2010.

12. This route was not clearly set out in his claim. Had it been, it is possible that this hearing would have been listed as a hearing of a preliminary issue (employment status) rather than as a hearing of a strike out application under Rule 37, and that case management orders would have been made, particularly around the exchange of witness statements.

13. Mr Sutton argued that I should not determine the question of employment status, and should instead put it off to a final hearing, allowing him to present more "detailed evidence". However, he struggled to explain the nature of the evidence that he expected to be able to produce.

14. I decided that the appropriate approach was to determine the application on a summary basis, without hearing evidence. I explained to Mr Sutton that I would proceed on the basis of agreed facts and that, where the facts were not agreed, I would take his case at its highest and assume, for today's purposes, that he will be able to establish the facts that he relies on. Only if I was satisfied that he had no reasonable prospects of establishing that he was in employment (within the meaning of s.83(2)) would the case be struck out.

Agreed/assumed facts

15. In the circumstances explained above I did not take evidence. The following matters are taken from the documents before me, or from what the parties told me in their submissions. If the case had continued, these facts would not be binding on any future Tribunal.

16. Mr Sutton first entered into a Candidate Contract in around 2018, when he was seeking selection as a candidate for local election. He continued to be bound by versions of that contract at all material times.

17. There is only one version of the Candide Contract before me. It is headed "Candidate Contract 2020 Bolton Borough Local Government Elections" and is unsigned. It is a short, simple document, extending over four pages but with just two pages of substantive text. The first page is essentially a preamble, which states that "*candidates who are selected by a ward are expected to complete the activities outlined in this Contract*". It explains that the aim of the document is to outline expectations, refers to support available and refers to changes in expectations as a result of covid restrictions. It also explains the process when the local party believes that a candidate has "broken" the contract. Essentially, this is a process of review and potential removal from the panel of approved candidates.

18. The second substantive page is headed "The Contract" and begins with the wording "*All candidates must...*". This is followed by fifteen numbered requirements which reflect the sort of activities one would expect a political candidate to undertake, such as attending meetings of various sorts,

organising and participating in campaigning and leafleting, organising and participating in voter registration and mobilization, and so forth. It is noted that if a candidate is elected as a Councillor they are expected to continue to meet the same targets.

19. There is no provision for payment of any kind within the contract. Mr Sutton fully accepts that he was not paid, and would not expect to be paid for that activity. Mr Gillie relies heavily on the point (which Mr Sutton did not dispute) that it would be illegal for a political party to pay a candidate to carry out these activities. Mr Sutton's position is that the consideration provided by the Labour Party in exchange for him carrying out the activities prescribed by the contract was that he would be eligible to apply for selection as a candidate in a local election or, at the appropriate time, as a parliamentary candidate.

20. It is agreed between the parties, at least for the purposes of this hearing, that Mr Sutton is (and has been at all material times) a member of the Labour Party, that he has been active as a campaigner/activist on behalf of the Party and that he has not been employed by the party in any capacity, other than the putative employment as a candidate for selection which he relies on in this case.

21. I understand that Mr Sutton was selected to stand as candidate in one (or more) local elections and I have also taken it as assumed fact in this case that Mr Sutton signed a copy of the Candidate Contract, although no signed version has been produced.

22. At some point in 2023, Mr Sutton completed an application form for selection as the Party's Westminster Parliamentary candidate for Bolton West. He was not invited to interview, and therefore his application failed at one of the earlier stages of the process.

Discussion and conclusion

23. The Employment Tribunal is known, in legal terms, as a "creature of statute". It has no inherent jurisdiction and can only determine claims which Parliament, through primary or secondary legislation, has given it the power to determine.

24. Section 120 EqA sets out the claims under the Act in respect of the which the Employment Tribunal has jurisdiction. Essentially, those are claims alleging a contravention of Part 5 of the Act and certain ancillary matters which are not relevant to this case. Unsurprisingly, Part 5 is the Part of the Act which deals with claims about work.

25. Section 39, which is within Part 5, prohibits discrimination by an employer against a candidate for employment, or against someone who is already employed. Mr Sutton explained to me that he considered that he was an employee at all material times from when he first signed a version of the Candidate contract in around 2018.

26. As I have mentioned briefly above, the definition of employment for the purposes of s.39 is set out in s.83(2) which provides, as material to this case, that "*employment means employment under a contract of employment, a contract of apprenticeship or a contract personally to do work*."

27. That definition is often referred to as the "extended" definition of employment, as it goes beyond the definition of employment contained in the Employment Rights Act 1996, and is akin to the definition of "worker" contained in that Act (**Pimlico Plumbers Ltd v Smith [2018] UKSC 29**).

28. The question, therefore, is whether the Candidate Contract amounts to a "contract personally to do work" within s83(2).

29. This gives rise to two questions – (1) is it a contract at all, in a legal sense and (2) if so, is it a contract personally to do work?

30. In relation to point 1, I conclude that this is not a contract in the legal sense. Having regard to the Supreme Court decision in **X v Mid Sussex Citizens Advice Bureau [2013] ICR 249** I not that it will be rare for volunteer agreements to be contracts, even if they place obligations on both sides. In this case, although it is perhaps unfortunate that the wording 'contract' is used my view is that the document is intended to (and does) set mutual expectations, and that there is no intention to create legal relations. In particular, there is no notice period, there is no provision for remedy for "breach", there are limited specifics as to the activities (e.g. no working hours are defined) and, of course, there is no provision for payment.

31. Secondly, I am satisfied that even if there is a contract in existence between the parties it is not a contract personally to do work. Most of the cases in this area focus on the requirement for personal service, and the effect of substitution clauses which are often inserted into contracts where the drafter does not want the contract to give rise to an employment relationship (again, in the wider sense). That is not the issue here, and I accept that, to the extent that the Contract places obligations on Mr Sutton, he is (at least in respect of most of those obligations) required to perform them himself. I agree with Mr Gillie, however, that not every requirement to do something can be properly interpreted as a requirement to do work, and, further, that the activist and campaigning activities which are required by the contract do not amount to "work" in the usual sense. They are activities undertaken in furtherance of the aligned political aims of the Party and (by implication) the candidate himself. They are, as I have said unremunerated, and, indeed, must be unremunerated if both the candidate and the party are to remain in compliance with the law.

32. The authorities caution that I must be careful not to impose a "dominant purpose" test in place of the statutory words. In my view, a consideration of the dominant purpose here supports the conclusion that that the activities are not properly regarded as work. The purpose of the Candidate Contract, as expressed in the wording of the document itself, is to ensure that Bolton Labour gains the best possible outcome in electoral terms and that everybody is equipped to play their equal part in that process. That explains

why the activities have been reduced to writing and placed into this format – the purpose is not to secure personal service from Mr Sutton, nor to regularise an employment or even quasi-employment relationship.

33. There are other circumstances in which the Equality Act offers protection, although those are expressly not relied on by Mr Sutton. The question of whether a political party (and, specifically, the Labour Party) could properly be considered to be a qualification body in relation to local election selection decisions was considered at by the House of Lords in the case of **Watt (formerly Carter) and others v Ashan [2007] UKHL 51**. It was held that it could not be, and so that route to claim in an Employment Tribunal was closed off. It notable that that case, in which both parties were represented by leading counsel, appears to have proceeded on the assumption that there was no employment relationship (in the s.83(2) sense).

34. Part 5 also contains provisions designed to protect applicants for personal and public offices, but those provisions exclude offices determined by election.

35. Part 7, in contrast, outlines the protections available for members and aspiring members of unincorpated organisations. It contains, at s.104, specific provisions about selection processes within political parties. Importantly, however, Part 7 claims are only justiciable in the County Court and not the Employment Tribunal. I accept Mr Gillie's submission that that is the appropriate route for any meritorious complaint which Mr Sutton may have. Lord Hoffman noted of the claimant in **Ashan** that he should have been told to pursue his complaint in the County Court, on the basis of the equivalent provision in the predecessor legislation (Race Relations Act 1976).

36. I am satisfied that this is also the case here. The claimant has no reasonable prospect of establishing that he was an employee within s.83(2) EqA. The test for strike out under Rule 37 Employment Tribunal Rules of Procedure 2013 is met, in that the claim has no reasonable prospect of success. To allow the claim to continue would be an abuse of process in circumstances where the Tribunal has no jurisdiction.

Employment Judge Dunlop

Date: 13 May 2024

WRITTEN REASONS SENT TO THE PARTIES ON

17 May 2024

FOR EMPLOYMENT TRIBUNALS

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