



EMPLOYMENT TRIBUNALS

Claimant: Mr P Sinnett-Thomas

Respondent:

- 1) Hillbrooke Hotels(Somerset)Ltd
- 2) The Secretary of State for Business and Trade

Heard at: Southampton

On: 13 May 2024

Before: Employment Judge Dawson

Appearances

For the claimant: Representing himself

For the respondents: no attendance

JUDGMENT

1. The claim against the 2nd respondent is stayed.
2. If the claimant does not contact the tribunal by 13 November 2024 either to lift the stay or to seek a further direction the claim against the 2nd respondent will be dismissed without further order on the basis that it is not being actively pursued.
3. The 1st respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of £660.

4. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £272.
5. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £79.66.

REASONS

1. By a claim form presented on 1 December 2023, the claimant presented claims of non-payment of notice pay, for holiday pay and for arrears of pay. The claim was originally presented against Hillbrooke Hotels (Somerset) Ltd which is a company in voluntary liquidation. It has presented no response to the claim. However, the liquidators have corresponded with the claimant and in the course of that correspondence they have stated that he was not an employee of the respondent but was a casual worker.
2. The Secretary of State has also been joined to these proceedings and has denied the claim on the basis that that no claim has been made under section 182 Employment Rights Act 1996 and therefore any claim is premature. The Secretary of State, therefore, asserts that the tribunal lacks jurisdiction to determine those claims.
3. The claimant has attempted to make a claim against the Secretary of State but could not do so because he had not been given the appropriate reference number. He has now been given the appropriate reference number but has not had time to make a claim before this hearing commenced. In those circumstances the claim against the Secretary of State has been stayed pending any such application by the claimant.
4. It is, therefore, necessary to consider whether the claims against the 1st respondent should continue and be determined today. It is, of course, the case that any findings made in the claim against the 1st respondent would not bind the Secretary of State who has not had the opportunity to challenge the evidence before this tribunal and it is often undesirable to risk there being contradictory findings of by different tribunals on the same issues. However, in my judgment it is appropriate to continue to decide the claim against the 1st respondent today since
 - a. the claimant is clearly entitled to bring such a claim,
 - b. the 1st respondent is not denying the claim in these proceedings and
 - c. it may be many months before a claim against the Secretary of State can be heard.

5. In those circumstances it is in the interests of justice for the claim against the 1st respondent to continue.
6. A claim can only succeed in respect of notice pay if the claimant was an employee of the 1st respondent and a claim for holiday pay and unpaid wages can only succeed if the claimant was a worker. If the claimant was an employee he is, under s230 ERA 1996, also a worker.
7. In respect of notice pay the claimant, at this hearing, has modified his claim to a claim for one weeks' notice pay in accordance with section 86 Employment Rights Act 1996 being, he says, £272 and he claims £79.66 in respect of holiday pay and £660 in respect of 41.25 hours not worked. I will deal firstly with the question of whether or not the claimant was an employee for the purposes of the notice pay claim.

The law

8. Following the decision of the Supreme Court in *Autoclenz Ltd v Belcher and others* [2011] IRLR 820 and the Employment Appeal Tribunal in *Ter-Berg v Simply Smile Manor House Ltd and others* [2023] EAT 2, the words of any written contract between the claimant and the respondent are important but where the true intent of the parties is in dispute, it is necessary to consider all the circumstances of the case which may cast light on whether those terms truly reflect their agreement because the real question is what was the true agreement between the parties.
9. For a contract of employment to be in existence there are a number of tests which the tribunal must consider.
10. In *Ready Mixed Concrete v Minister of Pensions* [1968] 1 All ER 433, it was held that for a contract of service to exist, three conditions must be fulfilled:
 - a. the servant agrees that in consideration of a wage... he will provide his own work and skill in the performance of some service for his master,
 - b. he agrees expressly or impliedly that in the performance of that service he will be subject to the others control in a sufficient degree to make that other master,
 - c. the other provisions of the contract are consistent with it being a contract of service.
11. In *Stephenson v Delphi Diesel Systems Ltd* [2003] ICR 471, it was held that for a contract of any kind to exist there must be a mutuality of obligation and in cases where putative employees provide their services on a casual as required basis that will generally be lacking and prevent a contract of employment coming into being (*Carmichael v National Power* [2000] IRLR 43).
12. In considering the other provisions of the contract and whether they are consistent with a contract of employment a wide range of factors may be considered including:

- Who provides and maintains the tools or equipment used.
- Whether the person hires their own help.
- The degree of financial risk adopted.
- The degree of investment in and management of the business.
- Whether the individual has the opportunity to profit from their own good performance.
- Whether the person is paid a fixed wage or salary.
- Whether the person is paid when absent due to holiday or sickness.

Findings of Fact

13. The claimant was engaged by the respondent as a finance manager. He started working in that role on 16 August 2022 and continued doing so until his engagement ended on the 19 September 2023.
14. On 3 August 2022, the general manager for the 1st respondent wrote to the claimant stating “with regards to days and pay , I am thinking we start at 2 days per week (so 16 hours) and we will very quickly know if another day is needed, we keep this flexible for the short term... And then we review”
15. On 9 August 2022 he wrote “as this position is new to Holbrook Manor and the hours are less, minimum 16 hours and maximum 24-hours, I do believe this will further evolve...”
16. On the 1st respondent’s “Authority to Recruit Form 2022 – 2023” which is undated, but was evidently created before the proposed start date of 15 August 2022, the person completing the form had to insert what type of contract was being provided with the options being permanent, fixed term with end date or casual or seasonal. The writer inserted “Perm-min 16 hours p/w max 24 hours p/w”.
17. A letter was sent to the claimant on 11 August 2022 which referred to him being a seasonal worker. Under the heading “Status of this Agreement” the managing director of the respondent stated “... This is not an employment contract and does not confer any employment rights on you (other than those to which workers are entitled). In particular it does not create any obligation on you to perform work for the company (even if offered) or on the company to provide work for you.”
18. I find that the claimant worked 2 days a week and could move the dates where necessary however, if he wanted to take holiday he needed permission to do

so. When he was off sick with covid he moved his days around so that he could isolate as necessary but still work his minimum hours.

19. The claimant was paid rolled up holiday pay.
20. The claimant was provided with a laptop computer to carry out his work and given a desk at the respondent's offices. He was given an email account, finance@holbrookmanor.com, and was told what work to do by the 1st respondent's general manager and a consultant who oversaw him from head office.

Conclusions

21. I am satisfied that the letter dated 11 August 2022, does not properly reflect the relationship between the claimant and the 1st respondent. I consider that the claimant was engaged on a permanent contract and was required to work a minimum of 16 hours a week. There is no suggestion that the claimant ever substituted anybody else to carry out the work for him, nor that he could do so. I find that he was subjected to the control of the respondent whilst he was working for it and that the 1st respondent provided all of his tools which he required to do his job. The claimant was not in business on his own account and was paid when absent due to holiday.
22. In those circumstances, I find that all of the relevant tests for a contract of employment are met. The claimant agreed that in consideration of a wage he would provide his services to the 1st respondent, he was subject to a sufficient degree of control by the 1st respondent and the other provisions of the contract were consistent with a contract of service. The fact that the claimant was required to work a minimum of 16 hours a week and the respondent was required to pay him for that work means that the requirement for an irreducible minimum was satisfied.
23. I accept the claimant's evidence as to the sums which he says he was owed and find that the 1st respondent should have paid him:
 - a. £79.66 in respect of holiday pay
 - b. £660 in respect of 41.25 hours not workedand given him one week's notice of termination.
24. In those circumstances, I find for the claimant and order accordingly.

Employment Judge Dawson

Date 13 May 2024

JUDGMENT SENT TO THE PARTIES ON

31st May 2024

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Recoupment

The recoupment provisions do not apply to this judgment.