



EMPLOYMENT TRIBUNALS

Claimant
I Azam

v

Respondent
Samuel Knight
International Limited

Heard at: Reading by video
Before: Employment Judge Anderson

On: 13 September 2024

Appearances

For the claimant: In person

For the respondent: A Butler (respondent's operations manager)

JUDGMENT

1. The claimant's claim of unpaid wages is dismissed because the claimant was neither an employee nor a worker of the respondent, and therefore the tribunal has no jurisdiction to hear the claim.

REASONS

Background

1. The claimant's company, Iftaza Limited, was engaged by the respondent to carry out work at the premises of one of the respondent's clients during September and October 2023. The contract was terminated early by the respondent. The respondent's client did not pay the respondent for the final week of the work carried out by the claimant. The respondent did not therefore pay the claimant's company for that work. The claimant claims that he was an employee of the respondent and brings a claim for unpaid wages. The respondent's position is that the claimant was at all times subcontracted to provide work through his company, Iftaza Limited.

The Hearing

2. Both parties filed documents separately. The respondent filed documents evidencing that the claimant is sole director of his own company and that it had contracted with the claimant's previous and current companies for work. The claimant provided a series of emails which focussed on the problems at the site he was engaged to work at in September and October 2023.

3. At the hearing both parties made submissions, and the claimant gave evidence on oath. The claimant said that he was an employee of the respondent and that the use of personal services companies, i.e. two personal services companies contracting with each other, was simply the way that he was paid. He said that despite the contract for services stating that he could substitute, he could not as he had specific and relevant qualifications. He confirmed that he received offers of work intermittently from the respondent. He was contacted when a relevant job came up and said whether or not he was available. If he was, the paperwork was sent to him. He accepted that the respondent has no obligation to offer him work, it did not pay him when he was not working and he was provided with no benefits such as sick pay or a pension by the respondent.
4. Mr Butler said that the respondent contracted with the claimant through his companies on an ad hoc basis. The claimant was employed by his own company, and it was that company against which he had any redress for unpaid wages.

Facts

5. When the claimant worked at the respondent's client's sites, this work was carried out under the terms of a contract between the claimant's company, Iftaza Limited and the respondent, which explicitly set out that any staff of the claimant's company were not employees of the respondent.
6. The respondent offered work to the claimant's company on an ad hoc basis over a number of years.
7. The respondent was not obligated to offer work to the claimant or his company.

Decision with reasons

8. Employee is defined at s230 Employment Rights Act 1996 as follows:
 - (1) *In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*
 - (2) *In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*
9. It is now established through case law that when considering whether there is a contract of service, i.e. that a person is an employee, there is an irreducible minimum of the three elements of (i) control, (ii) personal performance and (iii) mutuality of obligation. That is, these three elements must be present for a contract of service to exist. However, the tribunal should examine all relevant factors, and determine, as a matter of overall assessment, whether an employment relationship exists.

10. Section 230(3) of the Employment Rights Act 1996 defines a 'worker' as: *an individual who has entered into or works under (or, where the employment has ceased, worked under):*
- (a) a contract of employment or*
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.*
11. I find that the claimant was not an employee of the respondent. There is a contract between the claimant's company and the respondent for the provision of consultancy services. The contract clearly sets out that there is (i) no mutuality of obligation, (ii) there is a right of substitution, (iii) there is no control exercised by the respondent over the claimant or his company and (iv) that the contract is not an employment contract.
12. The claimant knowingly signed this contract, on behalf of his companies, on more than one occasion, and accepted in evidence that there was no obligation on the respondent to offer him work, nor was he provided with any benefits of the type expected in an employment relationship. Furthermore, there was no contract of employment.
13. I have also considered whether the claimant could have been a worker for the purposes of s230(3) Employment Rights Act 1996, but I find that he was not. He did not undertake to perform work personally and the contract he signed was clearly one in which the respondent was a client of the claimant's business.
14. I do not accept the claimant's arguments on substitution. While I accept that he is a specialist in his field and has qualifications which are necessary to the type of work the respondent engaged his company to perform, this does not preclude him from employing or subcontracting to someone with the same qualifications, and the contract explicitly allows for this.
15. I have also had regard to the substantial case law on workers (for example *Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC* and *Uber BV and ors v Aslam and ors 2021 ICR 657, SC*) in which it was found that the contracts signed indicating self-employment did not represent the reality of the contractual relationship between the claimants and respondents. I heard no evidence which would indicate that this was such a case. On his own evidence the claimant said that he worked for the respondent intermittently, and it was up to him to say if he was available for any particular piece of work that arose.
16. As I have found that the claimant was neither an employee nor a worker of the respondent, the tribunal does not have jurisdiction to hear his claim for unpaid wages and it is dismissed.

Employment Judge W Anderson

Date: 13 September 2024

Sent to the parties on: 21 / 11 / 2024

T Cadman
For the Tribunal Office