



EMPLOYMENT TRIBUNALS

Claimant: Christopher Haile

Respondent: Educopod Limited

Heard at: Bury St Edmunds

On: 21 January 2025

Before: Employment Judge Freshwater

Representation

Claimant: in person

Respondent: Mr Antony Paul Thompson (Director)

RESERVED JUDGMENT

1. The claimant is not an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996.
2. The claimant is not an employee of the respondent within the meaning of section 83 of the Equality Act 2010.
3. The claimant is not a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996.
4. The claims for direct age discrimination and arrears of pay are therefore dismissed.
5. The case management hearing set for 25 February 2025 at 2 pm is vacated. This will be dealt with in a separate case management order.

REASONS

Background

1. The claimant is Mr Christopher Haile. The respondent is Educopod Limited.

2. On 2 February 2024, the tribunal received an ET1 claim form from Mr Haile bringing complaints of direct age discrimination and a claim for arrears of pay against the respondent.
3. The claimant's employment status is disputed, and an open preliminary hearing was set. This judgement deals with that point.

Procedure and hearing

4. The hearing took place remotely (by CVP) and took one day.
5. The tribunal referred to a bundle of documents of 301 pages, supplementary bundle of 176 pages and written submissions on behalf of the claimant. I heard oral evidence and submissions from both parties.
6. I realised over the lunch break that Mr Haile had not been sworn in before commencing his evidence. He took the oath part way through his evidence, and confirmed that his earlier oral statement was correct. His evidence continued. I was satisfied that the defect had been remedied and that it was fair to both parties to proceed.

Issues

7. Mr Haile claims he was employed by the respondent, a start-up company concerned with construction materials, initially as a General Manager and latterly as Director of Operations. The Claimant acknowledges that he is recorded as a self-employed consultant.
8. The respondent's position is that Mr Haile was an independent self-employed contractor.
9. It is therefore necessary for the tribunal to determine the following questions:
 - (i) Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?
 - (ii) Was the claimant an employee of the respondent within the meaning of section 83 of the Equality Act 2010?
 - (iii) Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

Law

10. An individual who is in, or applying for, employment has the right not to be discriminated against on the ground of age (sections 39 and 40 of the Equality Act 2010.)
11. Section 83 of the Equality Act 2010 states:

“(2)“Employment” means—

(a)employment under a contract of employment, a contract of apprenticeship or a contract personally to do work...”

12. A worker has the right not to suffer unauthorised deductions from wages (section 13 of the Employment Rights Act 1996.)

13. Section 230 of the Employment Rights Act 1996 states:

“(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.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means 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;

and any reference to a worker’s contract shall be construed accordingly.”

14. As Lady Hale explained in *Bates van Winkelhof v Clyde and Co LLP and anor (Public Concern at Work intervening)* 2014 ICR 730, SC, ‘workers’ make up an ‘intermediate class’: they fall in between, on the one hand, ‘employees’ who are employed under a contract of employment (and who are entitled to the full set of employment rights) and, on the other hand, self-employed independent contractors who run a business on their own account for clients or customers (and who are mostly outside the scope of employment law).

15. In the case of *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* 1968 1 All ER 433, QBD it was said that a contract of employment exists if the following conditions are fulfilled:

- (i) the individual agrees that, in consideration of a wage or other remuneration, he or she will provide his or her own work and skill in the performance of some service for the employer
- (ii) the individual agrees, expressly or impliedly, that in the performance of that service he or she will be subject to the other’s control in a sufficient degree to make that other an employer
- (iii) the other provisions of the contract are consistent with its being a contract of service.

16. In the case of *Carmichael and anor v National Power plc* 1999 ICR 1226, HL, it was said that a lack of obligation on one party to provide work and the other

to accept work would result in ‘an absence of that irreducible minimum of mutual obligation necessary to create a contract of service’.

17. It is not necessary that an individual be subject to an employer’s actual supervision or control, it is necessary to show that, in practice, the employer can direct what the employee does or does not do — see, for example, *Catholic Child Welfare Society and ors v Various Claimants and Institute of the Brothers of the Christian Schools and ors* 2013 IRLR 219, SC.
18. The label attached by the parties to the contract in question is not decisive and will not trump evidence of the reality of the situation, although it may be a factor in the overall consideration of whether the contract is, in substance, one of employment — see *Young and Woods Ltd v West* 1980 IRLR 201, CA.
19. A tribunal should seek to paint a picture from the accumulation of detail and then stand back to make an informed, considered, qualitative assessment — see *Hall (Inspector of Taxes) v Lorimer* 1994 ICR 218, CA.
20. In the case of *Bates van Winkelhof v Clyde and Co LLP and anor (Public Concern at Work intervening)* 2014 ICR 730, SC, although the definition of employment in S.83(2) Equality Act 2010 does not include an express exception for those in business on their account who work for their clients or customers’, this had been introduced by a different route — namely, the concept of subordination identified in *Allonby v Accrington and Rossendale College and ors.*
21. In the case of *Chet v Capita Translation and Interpreting Ltd* EAT 0086/15, an employment tribunal concluded that the claimant, an interpreter, was neither a worker nor an employee in the extended sense under S.83(2) of the Equality Act 2010. It found that she was a professional providing her services to her client, in the context of a relationship that lacked subordination.

Findings of fact

22. The respondent is a company that was incorporated by Mr Byron Harding on 5 February 2020. Mr Paul Thompson was initially an investor. He became a director on 15 June 2023. This was due to the ill-health of Mr Harding.
23. Mr Haile did some casual paid work for the respondent as early as December 2020. This is evidenced by the emails between Mr Haile and Mr Keith Jones at pages 13 – 17 in the main bundle. At page 17 it can be seen that Mr Jones would ask Mr Harding for more money for Mr Haile.
24. Mr Haile said that he considered that he joined the company in December 2021. A meeting took place between Mr Jones and Mr Haile on 3 December 2021. During that meeting, Mr Jones and Mr Haile discussed the ongoing working arrangements for Mr Haile. This is documented at page 145 in the main bundle as follows:

“Dear Keith, Yesterday evening you suggested I might work three days a week, 8 hours a day, for £250 a day. How about we do that until the end of January, and then assess how far the company has advanced, my

contributions to that advancement, and where we should all go from there?..."

25. Mr Jones replied "OK. Starting next Wednesday at the pod." This is the only written record of the basis of the working arrangements. Mr Thompson questioned in his submissions the validity of the agreement and questioned Mr Jones' status within the respondent. However, it is clear that Mr Haile was paid £250 a day. This is well documented in the invoices submitted. Further, although Mr Jones may have had no formal role within the company (he was not a director or employee) it is obvious that he was a link between Mr Harding and Mr Haile, and was assisting Mr Harding in setting a strategy and direction for the company. I accept Mr Haile's evidence that Mr Jones was a family friend of his and facilitated the connection between Mr Harding and Mr Haile. It is not material whether or not Mr Jones was an investor in the company and I make no finding on that point. There is no written contract between Mr Haile and the respondent.

26. The pod is a sample of an Educopod product. It is located in Mr Thompson's garden and was where meetings took place. There was a disagreement between Mr Haile and Mr Thompson about whether it was an official office. This is not relevant to my decision. The reality is that business meetings took place there.

27. There was dispute between Mr Haile and Mr Thompson about various issues relating to Mr Haile's work including Mr Haile's job title. Mr Haile's evidence was that since January 2022, his title was Director of Operations and before that General Manager. Mr Thompson said that these were made up titles, and that Mr Haile had no authority to use them publicly or at all. The title of General Manager is consistent with the email sent to Mr Haile from Mr Jones on 10 December 2021 which included an attachment with a job description for a General Manager. I am therefore satisfied that the agreement was that Mr Haile would be referred to as the General Manager.

28. There is an example in the bundle of Mr Haile sending an email referring to himself as Director of Operations into which Mr Harding is copied (e.g. page 144 of the main bundle). However, there is no documentary evidence setting out that it was agreed that Mr Haile's job title was changed to Director of Operations. Mr Harding may not have disputed that title that Mr Haile was using, but I am not satisfied that it was an officially sanctioned change. If so, I would have expected Mr Haile to have confirmed this in writing as he did with the conversations he had with Mr Jones. It is also very soon after Mr Haile started as General Manager, which makes it unlikely that there would be a change so soon without documentation. It is very clear that Mr Harding has not shown an interest in the business detail of what was happening. This may well be due to his illness in April 2023, at least in part, but even before it seems that Mr Jones was the driver behind the business plan (as evidenced by the correspondence between Mr Jones and Mr Haile in 2020).

29. Mr Haile submitted invoices to get paid. These were sent from his personal email address.

30. On 3 November 2023 a meeting took place between Mr Haile and Mr Thompson. There is a dispute about what happened during that meeting, but both agree that it was not amicable. It is agreed that Mr Haile said that he had not been paid for work, which was disputed by Mr Thompson and, at the very least, the discussion became heated.
31. Mr Keith Jones sent an email to Mr Haile on 5 November 2023, stating that he should stop working for the respondent until further notice.
32. On 3 January 2024, Mr Haile emailed Mr Thompson requesting to be put on the respondent's payroll. Mr Haile accepted in his evidence that this was the first time he had made it clear that he considered himself an employee.
33. On 11 October 2024, Mr Haile completed an HMRC online form which, based on his answers, identified that he was likely to be employed for tax purposes.
34. There is no evidence from Mr Haile about exactly when he worked between December 2021 and November 2023. It is unclear which, if any, invoices are outstanding. In the bundle, there are invoices covering work in December, 2021, January, 2022, February 2022, April 2022, May 2022 and June 2022. There is also an invoice for 18 days work for a specific project. That invoice is dated 20 May 2023. However, it is clear there are messages about work between Mr Harding throughout 2023, until 1 November (see page 244 in the main bundle).
35. Mr Haile did not receive holiday pay. He was not required to work, or be available for work, at any particular point. I find that he was free to take time off when he wanted. There is no documentary evidence that he ever asked Mr Harding for time off. It is documented in the HMRC online form that Mr Haile agreed his working hours with the respondent rather than the respondent having the right to decide. He was not required to work from a particular office though he did attend meetings at the pod and work from there often. There was no evidence that he was trained for the work he did by the respondent, or appraised in any way. He had a great deal of freedom in what he chose to pursue, including setting up and controlling the respondent's social media.

Conclusions

36. There was clearly a great deal of animosity between Mr Thompson and Mr Haile. Neither gave particularly clear evidence, and there was a tendency during the hearing to focus on the ill-feeling rather than to provide simple answers to questions.
37. Mr Haile agreed to provide his own work and skill in return for remuneration. Although Mr Thompson said that Mr Jones was not acting of behalf of the respondent, it was clear that Mr Jones provided a lot of advice and assistance to Mr Harding. The end result is that these conversations did form the basis on which Mr Haile worked for, and was paid by, the respondent. There was no suggestion from the respondent that Mr Haile could send anybody else to

do his work. It is clear that when he did work, he did so personally. There was an implied agreement about remuneration based on the email exchange between Mr Jones and Mr Haile.

38. The respondent was not obliged to pay Mr Haile if he did not work. Mr Haile was not paid on a PAYE basis. There was clearly a lot of informality in the way that the respondent operated. This includes the way that Mr Haile was dealt with. However, Mr Haile himself was not consistent in his approach to invoices and was unable to explain to me when he took time off work and when he worked but was not paid.
39. Mr Haile was not obliged to work for the respondent. The evidence before me is that he was able to take long gaps without permission from the respondent.
40. Mr Haile agreed that, for remuneration, he would provide his own work and skill in the performance of a service for the respondent. However, he did not agree expressly or impliedly that in the performance of that service he would subject to the respondent's control to a sufficient degree that would make the respondent his employer. He mainly chose when he would work, and from where.
41. Even if I am wrong about control, I do not find that the provisions of the contract as a whole are consistent with it being a contract of service. Mr Haile's invoice in May 2023 was for a specific project rather than a permanent arrangement of days per week. There were no implied or express terms agreed about wider employment issues, such as holiday pay or entitlement, or sick pay, or grievance or disciplinary processes.
42. The implied terms of the contract were that the respondent was a client of Mr Haile. It was clear from the email exchange between Mr Jones and Mr Haile that it was necessary to see how business developed and what Mr Haile's contribution was.
43. For the reasons above, I find that Mr Haile was not an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996.
44. I have considered if Mr Haile is a worker for the purposes of the Employment Rights Act 1996. Even if he is self-employed, he could still be a worker. There is no one test that determines this question. Instead, I have looked at all the circumstances. Mr Haile was under a contract to perform services personally for the respondent. Mr Haile did, however, run a business and the respondent was his client. Mr Haile invoiced the respondent inconsistently and not over a consistent duration of time (there are gaps). There is evidence he invoiced for a specific project. He was free to work for other people: even if he did not do so, there was no express or implied term prohibiting him from doing so. He could choose when he worked and when he did not.

45. I find that Mr Haile is not an employee for the purposes of the Equality Act 2010. There is a distinction between the definition of worker under the Employment Rights Act 1996 and an employee under the Equality Act 2010. The authorities say that often someone who is not a worker will also not be an employee. Mr Haile provided his business services to the respondent who was his client. This was not a relationship of subordination. Mr Haile had great freedom in what he did, and how he chose to do his work. He could work when he wanted to do so, he was not trained or appraised at work and ran the respondent's social media without direction.

Approved by:

Employment Judge **Freshwater**

Date 18 February 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
20 February 2025

FOR EMPLOYMENT TRIBUNALS

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