EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimant Mr Z Sokolik

Respondent Freshfields Bruckhaus Deringer LLP

Employment Judge: Mr J S Burns

26th August 2010

ORDER

The Claimant's application dated 26th August 2020 under Rule 71 for reconsideration of paragraph 4 of the judgment dated 25th August (striking out the unfair dismissal claim) is refused under Rule 72(1).

Reasons

1. Paragraphs 10 to 12 of the Reasons for the judgment are repeated.
2. The application under Rule 71 refers to "*including a contract claim instead of striking it out".* This I interpret as a reference to the Claimant's unfair dismissal claim which I struck out. As far as I am aware there is no separate contract claim and in any event I did not deal with one in my judgment.
3. I did reflect on the evidence (and skeleton arguments) which was sent to me and read by me before the hearing
4. I gave the Claimant an equal opportunity to speak. On each issue I asked for submissions separately and allowed the Claimant to say whatever he wanted without any time constraint. The Claimant spoke for less time than the Respondent's Counsel but that was his own choice.
5. I do not agree that the Claimant setting up his own company is irrelevant to the issue of whether the Agency Agreement was genuine. If the Claimant had thought he was or should be treated as an employee of the Respondent it is unlikely he would have set up a company as a vehicle for providing his services. The Respondent had made a submission about this and if the Claimant wished to make his own submissions about this he could have done so. This was a minor point in any event and my conclusion that the Claimant was not an employee of the Respondent would have been the same without this point.
6. My decision to strike out the unfair dismissal claim had nothing to do with whether or not the Claimant would succeed in obtaining an order for re-instatement in the event that such a claim was permitted and succeeded. I had noticed that the Claimant had

claimed re-instatement. When I listed the claim for trial in May 2021 I mentioned to the Claimant that he should not wait to seek alternative employment because he may be setting his hopes on obtaining re-instatement with the Respondent. I told him that re-instatement orders were seldom made, particularly in cases where the Claimant had left his work complaining that the work place had damaged his health. I also told the Claimant that, if he was well enough to do so, he had a duty to try to mitigate his losses by seeking alternative employment. I told the Claimant these things in order to try to help him. The Claimant then told me that he had obtained alternative work and had fully mitigated.

7. I gave the Claimant an equal opportunity to address me about the Agency issue under the general heading of whether or not he was an employee.
8. The Claimant complains (again – the first time being in his email sent shortly after the hearing on 25/8/2020) about the fact that I have made a preparation time order based on only ten hours work by him. This was the figure he gave me, without any pressure either way. I was unwilling to make an award based on all the time he has spent on his claims so far because the Respondent's unreasonable conduct was limited to one discrete issue, on which the Claimant told me he had spent 10 hours.
9. It is not my practice to set out at any length trite law in my reasons. I consider that I have applied the correct law to determining whether or not the Claimant should be considered an employee of the Respondent. This co-incides with the Respondent's submissions because I agreed with them.
10. I did not disregard the evidence which I read in advance. If the Claimant wished to draw my attention to any particular evidence he had a full opportunity to do so when I asked him to address me.
11. In my opening remarks I specifically invited the parties to tell me if they wanted a break. The Respondents Counsel asked for a 5-minute break so he could consider a point before making submissions. The Claimant did not do so. Had he wanted a break he would have told me.
12. Under the heading "*Reasoning and Implications*" the Claimant has ended his application under Rule 71 with his generalised comments and opinions about the claimed shortcomings of law-firms such as the Respondent and a suggestion that it would be "*for the wider benefit*" for his contract claim (which I presume is a reference to the unfair dismissal claim) to be heard. The jurisdiction of the Employment Tribunal is not based on such considerations but is determined by statute. In any event the Claimant will have a limited opportunity to ventilate his criticisms of the Respondent by pursuing his disability claims.

Mr J S Burns Employment Judge
London Central
26/8/2020
For Secretary of the Tribunals

date sent to the Parties – 26th Aug 2020