



EMPLOYMENT TRIBUNALS

Claimant: Mr C M De V Tavares

Respondent: Reed Specialist Recruitment Limited (R1); Crest Plus Operations Ltd (R2) and PFL Electrical Contractors Ltd (R3)

Note: R1 and R2 are removed from the proceedings following this Order

PRELIMINARY HEARING

HELD REMOTELY ON CVP

On: 21 January 2022

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In Person

For the respondents: Ms A Gumbs (Counsel for R1)
Ms V Lawton (Director for R2)
Ms B Samuels (Solicitor – Peninsula for R3)

JUDGMENT

1. The application to strike out the claims against R1 as having no reasonable prospect of success is allowed and R1 is removed from the proceedings.
2. The claims against R2 are also struck out as having no reasonable prospect of success and R2 is removed from the proceedings.
3. The claim for unfair dismissal is dismissed as the claimant did not have 2 years' continuous service with his employer (R2).
4. The claim against R3 continues only as regards a claim for direct race discrimination under section 41 of the Equality Act 2010.

ORDER

5. The claimant shall no later than 21 February 2022 sent to R3/their representative and the Tribunal the further information about his race discrimination claim (as set out in paragraph [] of the Reasons below.
6. The respondent shall no later than 11 March 2022 confirm in writing to the claimant and the Tribunal that either (i) they wish to apply for strike out of the claims or (ii) further case management should be given to list a final hearing and give directions.

REASONS

Background

1. The claimant lodged a claim for unfair dismissal; unpaid wages and race discrimination in an ET1 dated 12 December 2020. This claim was brought only against R1.
2. At a Case Management Hearing (by telephone) on 23 September 2021 (which the claimant was unable to attend), R1 said that the claimant had never been employed by them, but was employed by one of their preferred suppliers, R2. R1 had placed the claimant with R3, and all the actions which the claimant complained about were carried out by R3. In her written summary of the hearing, EJ Lewis recommended that the claimant obtained advice before attending the next preliminary hearing.
3. The next preliminary case management hearing was held on 12 November 2021. At that hearing EJ Pearl joined R2 and R3 to the proceedings. He noted that R1 would be applying to be removed from the proceedings. He also noted that the claim for unfair dismissal should be struck out, if not withdrawn by the claimant, as it was clear that the claimant did not have 2 years' continuous employment.
4. EJ Pearl directed that an Open Preliminary Hearing (OPH) be listed for 21 January 2022 which would cover the following matters: 1) R1's application to be removed from the proceedings; 2) any applications made by either of R2 or R3, provided that these were made prior to 7 January 2022 and 3) striking out the unfair dismissal claim, if not withdrawn.

5. EJ Pearl also directed that the claimant should by 18 January 2020 to serve on the respondents and the Tribunal any witness statement for himself together with documents upon which he relied.
6. I note that at today's OPH, the claimant had not provided any witness statement or documents, although he said he had these available. The claimant said that he had not read/fully understood the contents of EJ Pearl's Order. The claimant had not followed EJ Lewis' recommendation to seek legal advice. Whilst I understand the difficulties for a litigant in person, I explained to the claimant that the Tribunal did need to be provided with information in order to decide his claim and he must read documents sent to him by the Tribunal and to seek advice if he did not understand them.

The OPH

7. At this hearing I had available in electronic form a bundle of 55 pages presented by R1. Ms Lawton on behalf of R2 had attempted to provide a bundle of documents via a link and had provided a paper bundle to the Tribunal office. However, as this hearing was conducted remotely I was unable to access the electronic documents via the link and had not been sent the paper documents by the Tribunal administration. The Tribunal had attempted to contact Ms Lawton on the morning of the hearing to arrange for her to send her bundle by PDF document but she had not received the email. I, therefore, did not have access to R2's bundle of documents. It was agreed that R1's bundle contained some relevant documents and that we should proceed with the hearing.
8. As mentioned above, the claimant had not provided a witness statement or any documents. Ms Samuels said that she had no documents on behalf of R3 to put before the Tribunal.
9. I attempted to ascertain from each of the parties what their position was as regards each of their claims/defences respectively.

The claimant

10. The claimant said that he was essentially seeking unpaid wages for 7 days. He said that he had worked 12 days for R3 from 19 October to 3 November 2020:

he had been paid for the first 5 days but not for the remaining 7 days from 26 October to 3 November inclusive. I asked how he had been paid: he said by bank transfer from R2.

11. I asked the claimant what his understanding of the work arrangement was. He said that he had been called by R1 to work for R3 which he had accepted. He said that was why he had brought the claim against R1 initially, as he felt they had a moral responsibility to ensure that he got paid for work he had done.
12. I asked him about the involvement of R2 who he acknowledged had actually paid him. After some initial confusion, the claimant accepted that he had a contract with R2 but he said that this was just for him to be paid, "like an accountant".
13. As regards his claim for race discrimination, the claimant said that this was based on his Portuguese nationality. The claimant accepted that this claim was essentially against R3 and in particular via their representative Steve Tuffin. The less favourable/detrimental treatment which the claimant alleged appeared to relate to Mr Tuffin complaining about the claimant's work and terminating his assignment with R3. As the claimant had not provided a witness statement or any supporting documents it was difficult to ascertain exactly the nature of his discrimination claim.
14. I explained to the claimant that in order to succeed in a discrimination claim he would have to prove to the Tribunal, facts from which they could conclude that there had been discriminatory behaviour.

R1

15. Ms Gumbs said on behalf of R1 that there was no contractual relationship between R1 and the claimant. She referred to page 49 in R1's bundle. I checked that the claimant had received a copy of this bundle. After some confusion, the claimant found the bundle and the relevant page.
16. This was an email sent from R1 to the claimant on 20 October 2020. In summary, the email noted that R1 had found the claimant an assignment to work for R3, which potentially could last until 21 October 2021. The email noted that the claimant had elected to use R2 as an intermediary for payment and had chosen to act as a Limited Company contractor and not as a Temporary Worker

with R1. The email went on to confirm that R1's conditions of employment did not apply to the claimant.

17. R1 would enter into a contract for services with the claimant's intermediary, namely R2 and that contract would regulate the assignment. The claimant would be employed by R2.
18. I asked the claimant for any comments he had on this document. The claimant repeated the narrative of his claim and his alleged discriminatory experiences with Mr Tuffin and R3. I asked the claimant to focus on the question which was whether anything contained in the email at page 49 was untrue or inaccurate? The claimant conceded that he could not deny the content of that document, though he maintained that R1 had a moral responsibility to him to ensure that he got paid for work which they had found for him.

R1's application to strike out/deposit order

19. At this point Ms Gumbs referred to R1's written application dated 7 January 2022 to strike out the claim against R1 or alternatively for a deposit order. Ms Gumbs explained in lay terms to the claimant what this application meant. The claimant confirmed that he understood the nature of the application.
20. I asked the claimant for any comments he had on the application and he said that he opposed it because he believed that R1 should help him to claim for the money he had not been paid.
21. I said I would hear from the other respondents before making a decision on R1's application.

R2

22. Ms Lawton confirmed that there was a contractual relationship between R1 and R2. There was no contractual relationship between R2 and R3 and R2 had no involvement in the assignment. She also confirmed that there was an "overarching" contract of employment between R2 and the claimant, which had run from 26 August 2022 to 1 August 2021-being a total of 48 weeks, which had covered multiple assignments for the claimant which had been obtained from R1 and from other employment agencies.

23. The arrangement was that the claimant would provide to R1 details of his timesheets for work done on the assignment with R3. R1 would then seek payment from R3 and pass this payment onto R2. R2 would then deduct administration fee and make the payments to the claimant. As the claimant was an employee, income tax and National Insurance would be deducted from this sum and the claimant was provided with a payslip.
24. The claimant confirmed that this had been the process. He accepted that he had used other employment agencies for assignments. However, he repeated his position namely that the assignment to R3 had been introduced by R1 and he felt that they had a responsibility to him to ensure that he was paid for work done for R3.
25. I asked the claimant how much money he was actually seeking for the 7 days' unpaid work. He was unable to answer that question. However, Ms Lawton was able to confirm that the gross pay for 5 days work (for the period 19-23 October 2020) was £635. On the basis of that figure, dividing by 5 to obtain the daily rate and then multiplying by 7, the amount claimed would be £889. The claimant agreed with this figure.
26. I asked Ms Lawton what the contract of employment (which all the parties had seen but which I had not) said about R2's obligations to pay the claimant. She said that the relevant clause guaranteed 336 hours of work in any 12 month period. The claimant had worked 657 hours (over 16 weeks of various assignments) in the 48 week employment period and so this obligation had been honoured. R2 would pay such sums as it received from R1 after the submission of timesheets by the claimant. Ms Lawton said that there was no obligation contained in the contract of employment for R2 as the claimant's employer to assist the claimant in obtaining payment.

R3

27. Ms Samuels said that she had only been instructed by R3 late last week and therefore, had limited information/documentation.
28. R3's position was that the claimant had worked and been paid for the period 19-23 October 2020. He had not worked for them for the further 7 days as alleged. Ms Samuels accepted that Steve Tuffin and Luke Fryer who were named by the

claimant, were subcontractors of R3. She said that there was no contractual relationship between R3 and the claimant. R3's contractual relationship in this scenario was with R1.

29. I put to Ms Samuels that the claimant could bring a race discrimination claim against R3 under section 41 of Equality Act 2010 (EQA) relating to contract workers, which she accepted. She said that R3 would be seeking Further and Better Particulars of the race discrimination claims and depending on the information provided, they may subsequently apply for those claims to be struck out.

Overview of the contractual relationships

30. I summarised the information given to me as follows: there was a contractual relationship between R1 and R3 for the provision of the claimant's services. Upon submission of timesheets by the claimant, R3 would pay to R1, the cost of those services.
31. As the claimant had elected to use R2 as his intermediary for payment, there was a contractual relationship between R1 and R2. R1 would pay the sums received from R3 to R2, who would deduct their admin fee and pay the remainder to the claimant, in accordance with the contract of employment between R2 and the claimant.
32. The claimant could not deny that he had accepted and entered into documentation which supported the creation of the contractual relationships as set out above. The claimant did not appear to fully understand how the arrangement worked and I understand and sympathise with his confusion. I also understand his frustration that, from his point of view, having carried out work for R3 who had been introduced by R1, he could not claim money for that work done from either of those two companies. However, on the basis of the information provided to the Tribunal this appears to be the technical legal position and reflects the structure of agency workers' contracts.
33. I also have sympathy with the claimant's comments concerning the moral responsibility of both R1 and R3 to ensure that the claimant is paid for work properly done. I accept Ms Gumbs' submissions that the Tribunal can only enforce legal obligations; however, whilst making no formal orders to this effect

I did comment that given the sums of money sought by the claimant in this case, it was surprising that 3 corporate respondents could not have found a way to settle this claim without recourse to Tribunal hearings.

34. I also noted that to date there had been 3 preliminary hearings on this case and as yet no final hearing had been scheduled. I must observe that this does not comply with the overriding objective at rule 2 of the Tribunal Rules of Procedure 2013 to deal with cases “in ways which are proportionate to the complexity and importance of the issues”. The legal advisors to the respondents in this case should be aware of their obligations to the Tribunal in this regard.

Conclusions

R1

35. I allow R1’s application that the claim against it should be struck out and that R1 should be removed from the current proceedings.

R2

36. The claimant confirmed that he had an employment contract with R2 and that the information given by Ms Lawton as regards his continuous employment with R2 was correct. As this fell short of the requirement for 2 years’ service the claimant’s unfair dismissal claim cannot proceed and is struck out.
37. The claimant also accepted that he had no race discrimination claim against R2. Accordingly, I find that there are no claims outstanding against R2 and that it should be removed from the current proceedings.

R3

38. Given the information provided to me, there is no contractual relationship between the claimant and R3. Therefore, the only outstanding claim against this respondent is that of race discrimination under section 41 EQA.
39. I explained the claimant that if he succeeds in establishing that the decision to terminate his assignment with R3 was on discriminatory grounds then he may be able to claim the 7 days’ unpaid wages as part of his compensation, together with his injury to feelings award.

40. I repeated the recommendations of my colleagues that the claimant should seek legal advice as soon as possible. I understood that he would not be able to afford legal costs but I reminded him that he would have received with the acceptance of his claim, a document setting out sources of free legal advice. The claimant could not recall receiving or reading any such document. I said that I would ask the Tribunal administration to re-send that document to him and that he should take steps as soon as possible to obtain such free legal advice.

Case Management Orders

41. I also made an order for the claimant to provide further information **by 21 February 2022** to R3 and the Tribunal relating to his race discrimination claim.
42. I said that the claimant should set out in writing: **WHAT** he said the discriminatory acts were; **WHEN** these had happened (an approximate date would be sufficient); **WHO** had carried out these acts and **WHY** he believed that these acts were because of his Portuguese nationality.
43. R3 must then **no later than 11 March 2022** confirm in writing to the claimant and the Tribunal that either (i) they wish to apply for strike out of the claims or (ii) further case management should be given to list a final hearing and give directions.

Employment Judge Henderson

JUDGMENT SIGNED ON: 21 January 2022

JUDGMENT SENT TO THE PARTIES ON
21/01/2022

FOR THE SECRETARY OF THE TRIBUNALS