



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Solomon Paulsen

v

Global Secure Accreditation Limited

Heard at: Reading Employment Tribunal
Before: Employment Judge Milner-Moore

On: 10 October 2022

Appearances

For the Claimant: Mr A Owen

For the Respondent: Ms L Robinson (counsel)

JUDGMENT

1. The claimant was not a contract worker within the meaning of s.41 of the Equality Act 2010.

REASONS

1. This preliminary hearing was fixed to consider whether or not the claimant was a contract worker within the definition of s.41 of the Equality Act 2010.
2. Section 41 defines a contract worker in the following terms

(5) A “principal” is a person who makes work available for an individual who is—

(a) employed by another person, and

(b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

(6) “Contract work” is work such as is mentioned in subsection (5).

(7) A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

3. I received a bundle of documents from the claimant of 104 pages and heard witness evidence from the claimant and from his representative, Mr Owen, and I also heard evidence from Ms Collins, who was employed by the respondent as its Head of Operations until 30 April 2022.
4. In light of the evidence before me I made the following factual findings

Factual findings

5. The claimant worked as a security manager at two hotels in Newbury and Oxford which were operated as Managed Quarantine Facilities or MQFs pursuant to arrangements put in place by the Department of Health and Social Care ("DHSC"). He brings a complaint of sexual orientation discrimination in relation to events that occurred during his time working as a security manager at one of the hotels. His complaint relates to acts undertaken by an employee of the respondent. It is not disputed that the claimant was not an employee of the respondent and the question for me was whether or not the claimant was a contract worker applying the definition which appears at s.41 of the Equality Act.
6. The claimant had registered with an organisation called K4 which is engaged in the business of supplying security related services. He was offered work by K4 as a security manager at the MQFs. It was not disputed that K4 was a subcontractor for another company G4S, which, in turn, had an agreement with DHSC that it would supply security staff at the MQFs.
7. The claimant has not produced any documents detailing the exact nature of his relationship with K4 because he took the view that it was not going to be relevant to the question of whether or not he was also a contract worker of the respondent's. That is unfortunate because under the statutory test it is relevant to know what the nature of his relationship with K4 was and whether it was one of employment. Under s.83 of the Equality Act 2010, the definition of employment is a broad one.
8. The claimant confirmed that he had registered for work with K4. Once registered, he indicated his availability for work via an app which K4 used to allocate work to the individuals who were on their books. As a result, he was allocated work at the MQFs. His rate of pay was agreed with K4. The claimant confirmed that he was providing his services as a security manager to K4 personally and also that he was not working for other organisations at the relevant time. It was not suggested that the Claimant was not subordinate to K4 in the way that he performed his work or that, once he had accepted an assignment from K4, that he had any right to provide a substitute instead of providing personal service. I found that, given the nature of the role and the requirement that individuals hold security accreditation, it was likely that the claimant would have been under an obligation to provide personal service once he had accepted an assignment. The claimant, in response to a single question put in cross examination, described himself as self-employed. However, when I asked him what he meant by this he explained that he submitted timesheets to K4 detailing the hours that he had worked rather than receiving a regular salary.

9. The MQFs operated by reference to arrangements made by the DHSC as part of the government's response to the Covid 19 pandemic, during the period when travellers arriving in the UK had to undertake a period of quarantine before being allowed to move more freely around the United Kingdom. Travellers arriving in the United Kingdom were confined to their rooms in designated hotels and were allowed out only in specified circumstances until that quarantine period had been completed. The DHSC drew up a set of standard operating procedures (SOPs) which recorded how the MQFs were to be run. The SOPs evolved over time as the circumstances of the pandemic changed.
10. A number of hotels contracted with DHSC to provide hotel services (accommodation and catering). Health providers contracted with DHSC to provide medical services necessary at the MQF. G4S was responsible for the provision of security related services. There were SOPs in relation to each of these core services.
11. I have been provided with a copy of the SOPs relating to security and these detail the responsibilities of those operating the security function within the MQFs. Under the SOPs the security contractor was responsible for collaborating with the hotel and the other contractors to ensure that the arrangements being followed were Covid safe and compliant with the applicable rules and guidance and for maintaining adequate records to demonstrate that the SOPs were being complied with. The responsibilities of security contractors in relation to the other personnel working at the MQF included ensuring that covid testing of staff was taking place and that social distancing was being observed. In relation to the travellers being accommodated at the MQF, security personnel were responsible for collecting information in relation to each traveller, liaising with the Track and Trace system, making arrangements for exercise outdoors and administering requests for individuals to be permitted to leave the MQF in exceptional circumstances (such requests were to be referred to the DHSC).
12. The respondent's role was different to the other providers in that it was not directly concerned with taking care of the travellers at the MQFs. The services provided by the respondent are outlined in a note, which appears at pages 103 to 104 of the bundle. It records that, for each MQF, the respondent would provide a "liaison officer" who would represent the interests of the DHSC and perform various functions. These included assisting with onboarding and training staff at new MQF's about DHSC's requirements, identifying high risk travellers (e.g. pregnant women), collecting evidence of potential criminal offences (e.g. where individuals had absconded from quarantine) and challenging any breaches of the SOPs that they observed either by hotel staff, security staff or the health providers. The note describes that liaison officers would be part of the embedded infrastructure of the hotel The respondent also provided "contract managers" to keep an eye on whether the hotel, security and health providers were generally adhering to their contractual obligations to DHSC and to identify emerging issues of concern in relation to the service being provided. The respondent's role was therefore primarily

concerned with ensuring that DHSC standards and contractual requirements were being complied with by the contractors.

13. There was no formal written contract between the respondent and the DHSC because the respondent's services were commissioned in circumstances of some urgency and so the note that I have referred to was the sole record of the services provided. Although there was no formal written contract between the respondent and DHSC, it is clear that there was nonetheless a contractual agreement that the respondent would provide various services to DHSC in connection with the operating of the MQFs for which it would be paid.
14. The respondent did not have a contractual relationship with either G4S or K4. Those bodies were contractors providing services to DHSC (in K4's case doing so as a sub-contractor of G4S). Nor was there any written contract between the claimant and the respondent.
15. The claimant argues that he was subject to direct management oversight by the respondent as to the way in which he performed his role as security manager. The claimant's evidence was that on his first day he was instructed by G4S that the respondent was there to represent DHSC and that he should comply with any request that they made. The claimant maintained that he was subject to significant control by the liaison officers employed by the respondent and that he was told that the MQF facilities could be shut down if the liaison officers were dissatisfied with the security work that was being undertaken. The claimant attended daily meetings with the respondent's liaison officer, as did the hotel managers and the health providers. An example of a briefing note produced by the respondent is included in the bundle. Information provided by the claimant was included in returns produced by the respondent's liaison officer for DHSC and the claimant was also responsible for reporting directly to the DHSC in relation to some matters. The claimant places reliance on documents which evidence the liaison officer drawing attention to breaches of the SOPs on the claimant's part. For example, on one occasion a document produced by the respondent records that the claimant was advised that he should not have disposed of documents that had been stained by coffee because all such documents needed to be retained. Another document records the claimant being advised by the respondent's liaison officer to look at the SOP in more detail and sets out a number of recommendations made by the liaison officer to ensure future compliance with the SOPs (in relation to mask wearing and ensuring social distancing amongst the security staff).
16. The respondent accepted that its liaison officers attended regular meetings with employees of contractors such as the claimant. However, the respondent's evidence was that responsibility for day-to-day management and control of the claimant's work was that of either G4S, or K4, and that its interactions were limited to assessing compliance with the SOP and acting as a conduit for information between DHSC and the contractors providing the security, health and hotel services. It was not responsible for managing the claimant's performance of his functions, but it would note breaches of the SOPs and would report concerns. The respondent's witness was quite clear

that it was the respondent had no power to shut down any of the MQFs, that would be a decision for DHSC. It was equally a matter for the contractors which employees they supplied to provide services to DHSC.

17. I found that the staff of the respondent worked closely with the staff of the contractors at the MQFs. That was necessary given the particular role that each was performing and given that the respondent was reliant on the staff of the security, hotel and health providers to provide it with the information that it needed to perform its role for the DHSC. However, I found that the respondent was not responsible for managing the claimant and did not exercise control over the claimant's work. The SOPs set by DHSC made clear that it was for DHSC to take decisions on any matters of importance. I therefore considered it unlikely that the respondent would have been in a position to close down any MQF. The contractors (K4 and G4S) were responsible for supplying security services in accordance with the SOPs and it was to that end that they supplied the claimant's services as security manager. The service being performed by the respondent was that of ensuring compliance by contractors with the SOPs and any other DHSC requirements. The emails that were sent by the respondent's staff refer to the making of "recommendations" and the delivery of "advice" to security managers. These are consistent with the respondent's role being to monitor compliance with the SOPs set by DHSC and offer advice where they found breaches rather than exercising direct management oversight or control. If the respondent had been exercising direct management control over the claimant in relation to these matters there would have been no need to make recommendations or to offer advice to the claimant, it could simply have instructed the claimant as to what he must do.

Summary of relevant law

18. I have been referred to a number of cases by the parties, in particular, the case of Harrods v Remick [1997] IRLR 9, Leeds City Council v Woodhouse [2010] EWCA Civ 410 and Jones v Friends Provident Life Office 2004 IRLR 783.
19. I consider that s.41 establishes three criteria which an individual who wishes to show that they are a contract worker must satisfy.
 - 19.1 First, the individual must show that there is a "principal" who "makes work available" for him or her.
 - 19.2 The second criterion is that the individual must be "employed" by the person who is "supplying" the individual to the principal. The applicable definition of "employment" that in s.83 of the Equality Act 2010. This is a broad definition applying where there is either a contract of employment or a contract personally to do work. It is sufficient if there is an obligation to do work personally from somebody who is in a position of subordination. A lack of mutuality of obligation in between assignments (for example where somebody who is employed by an agency on a series of assignments) will not be an obstacle to an individual being employed.

- 19.3 The third element is that the individual is “supplied” by that other person to the principal “in furtherance of a contract to which the principal is a party”(even if the other person is not a party to that contract)”
20. I considered that the authorities to which I was referred established the following propositions. There need not be direct managerial control by the principal. The mere fact that the work performed by the individual in some way benefits the principal may not be sufficient to trigger s.41. However, where work benefitting the principal is combined either with significant control over the worker or with a particularly close relationship between supplier and principal then that may suffice. So, for example, in the Harrods v Remick case, Harrods, benefitted from work performed by workers supplied by the concessionaire which employed them. Under the particular contractual arrangements between Harrods and the concessionaire, Harrods was said to own the stock being sold by the concessionaire’s employees at point of sale and Harrods deducted a commission for each sale. The employee’s services were therefore directly benefitting Harrods. There was also a particularly close relationship and significant control. Sales benefitting Harrods could not have been achieved without the provision of the concessionaire’s employees and goods and Harrods had the right to bar any employees of the concessionaire who did not meet its standards. So, in those circumstances, it was found that the employees were contract workers of Harrods. In the Leeds City Council v Woodhouse case, there was an absence of any control on the part of the principal, but the close nature of the working relationship between supplier and principal was such that the Mr Woodhouse was found to be a contract worker. The contract between supplier and principal need not be a written contract and it is not necessary that there be a direct contractual relationship between the principal and the supplier, it will suffice if there is an unbroken chain of contracts linking the supplier and the principal.
21. Mr Owen suggested that it was not necessary that there be a contract between the supplier and the principal at all. However that argument runs contrary to the statutory language and to the authorities to which I was referred, in each of which there was contractual relationship between the supplier and the principal. So, in the Harrods v Remick case, there was a contract between the concessionaire and Harrods setting out the terms on which the concessionaire was licensed to sell goods at Harrods. Similarly, in Leeds v Woodhouse, Mr Woodhouse was employed by WNWHLL to manage the Council’s housing stock and had been harassed by an employee working in the Property Services Division at the Council, WNWHLL having subcontracted its maintenance responsibilities to the Property Services Division. There was a contract between the Council and WNWHLL. There was also a service level agreement between WNWHLL and the Property Services Division. There was therefore a set of contractual arrangements that linked the supplier (WNWHLL) and the principal (the Council). In the Jones case, Mrs Jones was employed by an estate agency and supplied to provide services for the benefit of Friends Provident (a financial services provider), acting as an authorised company representative licensed to promote the financial products offered by Friends Provident. She supplied those services in furtherance of a contract in place between the supplier (the estate agent) and the principal (Friends Provident).

Conclusions

22. I accepted that the claimant was “employed” by K4 in the broad sense denoted by s. 83 Equality Act 2010. I considered that although the claimant had stated that he was self-employed, he had answered this question without really understanding quite what this meant. I have found that the claimant was under an obligation to provide personal service to K4 once he had accepted an assignment. There is no evidence to suggest that the claimant was not in a position of subordination to K4 when he was supplying those services. I therefore considered that the claimant had established that he was employed by K4 for the purposes of the Equality Act 2010.
23. I have, however, concluded that the claimant is not a contract worker for the following reasons.
- 23.1 I do not consider that the claimant has established that the respondent was a principal who “made work available” for the claimant. Here the work that the claimant was engaged in was the provision of services as a security manager. That work was made available to the claimant by DHSC (which required security staff to operate the MQF’s) and by G4S and K4 as the suppliers of security staff to DHSC. The respondent wasn’t engaged in the provision of security services, it was engaged in overseeing compliance by contractors with the DHSC’s SOPs and contractual requirements. The claimant’s provision of security services to DHSC was part of the factual context against the respondent exercised its oversight/compliance functions. However, the claimant was not being supplied by K4 to perform services for the respondent and nor did the respondent benefit directly from the claimant’s services.
- 23.2 I also considered that the claimant had failed to establish that he had been had supplied to the respondent by K4 “in furtherance of a contract” to which the respondent was a party. Both the statutory wording and the cases to which I have referred make clear that there must be a contractual link sort between the principal and the supplier of the contract worker. It need not be a direct link, there may be a third party, acting as a conduit between the supplier and the principal, who intervenes between them in the contractual chain. However, a contractual link of some sort is required. I have concluded that there was no contractual link between the respondent I recognise that a contractual relationship may exist even if there is no written document which sets out the terms of that relationship. Contracts may be implied as a result of the manner in which parties conduct themselves where it is necessary to do so. However, there is no basis for implying a contract between K4 and the respondent here in relation to the supply of the claimant’s services. The work that the claimant did as a security manager was fully explained by his being a worker supplied by K4 to G4S providing services for the ultimate benefit of DHSC under G4s contractual obligation to DHSC.
24. I have borne in mind in reaching my conclusions that the authorities suggest that it is appropriate to give a broad construction to s.41. But, even giving s.41 a broad construction, it is necessary under the statutory wording for an

individual who asserts that they are a contract worker to show that they have been supplied by their employer in furtherance of a contract to which the principal is a party. I cannot give s.41 so broad a construction as to dispense with that requirement.

25. For these reasons, I have concluded that the claimant was not a contract worker within the meaning of s.41 of the Equality Act.

Employment Judge Milner-Moore

Date: ...4 December 2022.....

Sent to the parties on: 9/12/2022

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For the Tribunal Office