



EMPLOYMENT TRIBUNALS

London Central Employment Tribunal (remote) on 2nd February 2022

Claimant

Lincoln Ka Ming Cheung

Between

&

Respondent

Ossesso Limited

Before

Judge M Aspinall (Sitting as an Employment Judge)

Appearances

Mr L K M Cheung (in person)
The Respondent did not attend and was not expected

Full Merits Hearing Judgment

The Respondent informed the Tribunal that they would not attend. They did not provide witness statements or much by way of written evidence. They also advised that they had entered into voluntary liquidation but provided no evidence of the appointment of a liquidator. The Claimant gave oral evidence that he had not been able to confirm the liquidation status of the company, that the company was still active at Companies House and that the Companies House website did not record them to be anything other than active and trading. **Having heard from the Claimant and having considered all of the written information, I find:**

1. Based on the nature of the contract between the Claimant and the Respondent ("Agreement") dated 28th November 2020, the Claimant was engaged on a personal basis to provide personal services for the Respondent.
2. Those services are particularised in section B of the Agreement and the Claimant is described in the same agreement as being the "Consultant".
3. The Agreement also records that the Respondent considered the Claimant, personally, to have the qualifications, experience and abilities required to provide the services that they required. There was no right in the Agreement for the Claimant to substitute another person in his own place.
4. The Claimant submitted invoices on a monthly basis for the payment of his properly due fees and these were paid to him gross by the Respondent.
5. The Agreement was clearly not a contract of employment; particularly so for the purposes of s.230(3)(a) Employment Rights Act 1996 (ERA1996).
6. The Claimant was, because of my earlier findings, a worker for the purposes of s.230 ERA1996.
7. The Claimant was engaged by the Respondent between 2 December 2020 and 2 March 2021, a period of 90 days.
8. The Claimant's claim for Unfair Dismissal fails because he was not, per my findings above, an employee for the purposes of s.230 ERA1996. Even if the Claimant had

been an employee he had insufficient length of service to bring a claim for Unfair Dismissal.

9. In respect of the other claims made by the Claimant - unpaid fees, holiday pay and notice pay on termination - the situation is different.
10. The Claimant, being a worker, was entitled to bring claims for those sums properly payable to him as such a worker. I am satisfied that, in the absence of any express clauses to the contrary in the Agreement, this is the case in respect of unpaid fees and for statutory holiday pay.
11. The Claimant, not being an employee, cannot bring a claim for unpaid contractual notice. The Agreement specifies that a period of 1 week notice to terminate is required from either party. That however does not assist the Claimant.
12. A claim for contractual notice pay would have to be brought as an action in Breach of Contract. Pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"), such a claim can only be brought by a person who is an employee.

IT IS ORDERED:

1. The Respondent shall pay to the Claimant, forthwith, the sum of **£4,200** for unpaid fees; and
2. The Respondent shall pay to the Claimant, forthwith, the sum of **£2,450** for 7 days accrued and unpaid statutory holiday pay; and
3. The claim for Unfair Dismissal is dismissed. The Claimant was not an employee and would have had insufficient service in any event; and
4. The claim for Breach of Contract for unpaid notice pay is dismissed as the Claimant was a worker, not an employee.

Judge M Aspinall on Wednesday, 2nd February 2022

Note

Reasons for this judgment having been given orally at the hearing, written reasons will not be provided unless they are requested - by either party - within 14 days of this notice.

PUBLIC ACCESS TO EMPLOYMENT TRIBUNAL DECISIONS

Judgments and reasons for judgments of the Employment Tribunal are published in full. These can be found online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Copy sent to the parties on:02/02/2022

Signed
FOR THE TRIBUNAL OFFICE