



EMPLOYMENT TRIBUNALS

Claimant

Simbarashe Chikanza

v

Respondent

Al Jazeera Media Network

Heard at: London South by video

On: 29 July 2024

Before: Employment Judge Anderson

Appearances

For the claimant: In person

For the respondent: P Sangha (counsel)

RESERVED JUDGMENT

1. The claimant was not an employee of the respondent at the relevant time. The claim of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

REASONS

Background

1. The claimant brings a claim of unfair dismissal against the respondent. He states on his claim form that he was employed by the respondent from 1 March 2019 until 23 November 2023 as a research consultant. The wording of the grounds of claim indicate that the claim is one of constructive unfair dismissal. The claimant refers to a last straw act commencing in April 2023 and stretched across several months. ACAS early conciliation took place from 19 December 2023 until 30 January 2024. The claim was filed on 29 February 2024. The respondent denies that the claimant was an employee and says he has no standing to bring a claim of unfair dismissal. It states that the claim is, in any event, out of time.
2. The matter was listed for a three hour open preliminary hearing before me today to consider the following matters:
 - a. Whether the claimant was an employee or worker of the respondent – if he was not, the Tribunal will have no jurisdiction to consider the claims brought;
 - b. Whether the claims have been brought out of time – if they have, the Tribunal will have no jurisdiction to consider the claims brought;
 - c. the claimant's application to strike out the response.

The Hearing

3. The respondent filed a joint bundle of documents of 157 pages. The claimant also filed his own bundle which had 69 pages. The claimant filed a witness statement. There was also a witness statement from the respondent's witness Alex Crutcher. I received a skeleton argument from each of the parties.
4. At the outset of the hearing, I asked if there were any preliminary matters. Both parties said there were not. After evidence was completed, the claimant referred to documents not being included in the bundle which he had requested, the implication being that they had been withheld. I noted that he had had an opportunity at the outset of the hearing to raise such matters. The claimant said his health was not good. I asked about adjustments, and he said that he may need to have some points explained to him.
5. As oral evidence took up the allotted three hours for the hearing I allowed closing submissions in writing. I reserved judgment. The parties had until 31 July 2024 to file submissions. Mr Sangha filed submissions on behalf of the respondent. The claimant did not file submissions.

The Law

Under s94 of the Employment Rights Act 1996 (ERA 96) an employee has the right not to be unfairly dismissed by his employer.

6. Employee is defined as follows at s230 ERA 96:
 - (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.

Relevant Findings of Fact

7. The claimant is a journalist who in 2019 was writing about corruption in Zimbabwe.
8. The claimant was contacted by Alex Crutcher, a producer employed by the respondent, in January 2019 because the claimant's reporting was of interest to Mr Crutcher.
9. Mr Crutcher sent an email to the claimant as follows on 24 January 2019:

Thank you for this Simba

Great to speak with you too. I hope you've been able to make some inroads at Davos.

These relationships must be unpicked and investigated. Exposing financial wrongdoing, and the complicity of those on the outside in facilitating it, is so important - particularly when so-called global powers are all too happy to ignore inconvenient abuses by government against their citizens.

It's for journalists to hit back where it hurts - their bank accounts.

Let's touch base tomorrow if you have a free moment, would be interested to hear what you've gleaned so far.

Speak soon, Alex

10. The claimant relies on this email as being a 'contract undertaking declaration' with the parameters of exposing financial wrongdoing. I find that this email does not evidence any intention to form a contract or that a contract had been formed.
11. Mr Crutcher travelled to Leeds to meet the claimant in February 2019. After that meeting, on 21 February 2019, Mr Crutcher wrote to the claimant setting out that the parties had agreed to share data and enclosing a non-disclosure agreement. Mr Crutcher said the claimant signed the agreement. The copy in the bundle was unsigned. The claimant said that he had signed such an agreement, but it was not this one. No other version was provided, and I find that the parties signed a non-disclosure agreement, as included in the bundle, on 21 February 2019.
12. The claimant claims that a memorandum of agreement was signed between the parties on 22 February 2019 which was withheld from him. Mr Crutcher's position was that the non-disclosure agreement was the only agreement signed between the parties. I find that there was no memorandum of agreement dated 22 February 2019. I find this not only because it is not before me but also because there is no evidence in the subsequent correspondence between the parties that such an agreement, as described by the claimant, being a contract whereby he would be credited for work on exposing financial wrongdoing in exchange for the respondent spending £50,000 investigating the alleged wrongdoings of Cyril Ramaphosa, existed.
13. The claimant claims that an employment contract was signed on 6 July 2021 after he was approached by the BBC. He says the purpose of this was to stop him from working with the BBC. He relies on the following email to Mr Crutcher dated 6 July 2021:

Dear Alex.

I trust I find you well.

Just a confirmation of our agreement via phone yesterday for me to help complete the documentary commenced 2 years ago and finalise it within the next 6 months' time, or earlier.

We agreed that my role shall be that of a consultant, bringing in research assets and referral checks per your instructions. My obligations shall be to within all means possible complete tasks needed to ensure the project comes to a finale in the shortest possible time.

We agreed to a fee of a total £6,000 for the period of which half shall be paid in advance.

This project shall remain strictly AJ, confidentiality maintained and not be shared with any other entity or persons.

My availability shall be week days, and some Saturdays per arrangement.

14. Mr Crutcher said that he entered into a freelance agreement with the claimant at this time as he (Mr Crutcher) was still working on the programme about corruption which had led him to be interested in the claimant's reporting in 2019. The purpose of the agreement was to ensure the information was not shared with another journalist and for research.
15. The agreement, as noted in the email, was that the respondent pay the claimant £1000 a month for six months. This arrangement continued beyond six months until the programme, by then called Gold Mafia, was finished.
16. The email of the 6 July 2021 is the earliest document before me evidencing that the respondent paid the claimant for services.
17. Both parties agreed that the agreement between them included that the claimant would not share his information with the BBC at that time.
18. It is the claimant's case that he was expected to provide 35 hours per week work for this sum (as set out in a phone call from Alex Crutcher) and that he did so, furthermore that he must work exclusively for the respondent. He said there was a second contract signed digitally at this time. The respondent denies this. No documentary evidence was provided of the terms of the agreement.
19. Invoices are included in the bundle starting from June 2021, from Media Origins Limited (the claimant's company) to the respondent. The description of the service billed for is 'Special Consultancy Work'. Invoices continue until March 2023.
20. In March 2023 the claimant became concerned that a man called Hopewell Chinono was being asked to comment on the Gold Mafia programme on the respondent's network. The claimant was unhappy with this as he believed Mr Chinono to be a corrupt person. Mr Crutcher said that he asked the claimant not to attack Mr Chinono on the claimant's own social media platform as those attacks were implying that Mr Chinono was involved in the Gold Mafia. This was not (in Mr Crutcher's opinion) the case, and Mr Crutcher believed this to be distracting from the bigger message of the programme about significant corruption.
21. Mr Crutcher confirmed to Phil Rees of the respondent by email on 7 June 2023 that the last invoice from the claimant was for April 2023 representing the claimant's final contribution to the Gold Mafia project.
22. In September 2023 the claimant asked Mr Crutcher if he could send an invoice for work in August 2023. Mr Crutcher replied that he could not as the respondent had not commissioned work. A conversation by WhatsApp ensued with the claimant asking for payment for expenses for travel and Mr Crutcher refusing.

23. In October 2023 in an email to the claimant, Mr Crutcher made the following comments:

I value your contributions to Gold Mafia a great deal, in particular your background knowledge of the film's subjects such as Uebert Angel. As agreed, your employment concluded once the four films were broadcast.

Regarding credits. You raised the issue after Film 1 was broadcast so we added yours for the remaining parts of the series. While I cannot go back and make changes to Film 1, should you need a reference for future employment, I would gladly provide one noting your contributions to the series as a whole.

24. On 24 November 2023 the claimant sent a letter to the respondent headed 'resignation'. In this letter he said that he was resigning with immediate effect.

Decision and reasons

25. It is the claimant's case that he was an employee of the respondent, i.e. he worked under a contract for services, and that he was constructively unfairly dismissed. The respondent says he was self-employed and cannot bring a claim of unfair dismissal.

26. In *Ready Mixed Concrete (South East) Limited v the Minister of Pensions and National Insurance [1968] 2 QB 497* MacKenna J suggested that the key distinguishing features of a 'contract of service' are that:

(i) The employee agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his employer.

(ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other his employer.

(iii) The other provisions of the contract are consistent with its being a contract of service.

27. All the circumstances of the case fall to be considered when determining disputes over employment status, as discussed in *Autoclenz Ltd v Belcher and others [2011] ICR 1157* in what has been called the 'multiple test'.

28. It is now established that when considering whether there is a contract of service there is an irreducible minimum of the three elements of control, personal performance and mutuality of obligation. That is, these three elements must be present for a contract of service to exist. However, the tribunal should examine all relevant factors, and determine, as a matter of overall assessment, whether an employment relationship exists.

29. The claimant claims to have been employed by the respondent from 1 March 2019. It is not clear why this date is relied upon. Contact between the parties commenced in January 2019, the first written document I was taken to being dated 24 January 2019, and a non-disclosure agreement was signed on 21 February 2019. There is no other documentation from this time. There is no evidence that the respondent was paying the claimant for any services on any basis before June 2021 or that he carried out any work for it during that time. The claimant claims he reached an agreement with the respondent that he

provide services in return for it spending money investigating Cyril Ramaphosa. There is no evidence to support this claim and even if there had been, I cannot see how such an arrangement would support an argument that there was an employer/employee relationship between the parties. I find that the claimant was not an employee of the respondent during the period 1 March 2019 to 5 July 2021.

30. In June or July 2021, a contractual arrangement between the parties commenced. This is evidenced by the invoices sent to the respondent commencing June 2021 and the email from the claimant to Mr Crutcher dated 6 July 2021 setting out the terms they had agreed. Additionally, both witnesses confirmed in oral evidence that such an arrangement commenced at that time. I have considered whether this arrangement was a contract of service.
31. I accept that the claimant and the respondent entered into an agreement whereby the claimant provided services (some research and brief writing work), as well as an undertaking not to share his information relevant to the Gold Mafia series with another journalist before the completion of that series. In exchange he was paid £1000 per month. I accept that this indicates that there was some mutuality of obligation.
32. I was not provided with evidence from either party about whether the services (research and brief writing) had to be supplied by the claimant, or if he could substitute for his own work. The claimant states that there was no arrangement allowing for him to substitute his services. However, I was not taken to any prohibition on him doing so and the claimant did not say that the respondent had verbally made this a condition. It was not put to me that the claimant was the only person with the knowledge necessary to provide research and briefings on the relevant topics to the respondent. I find that there was no requirement for the claimant to provide personal services.
33. On control, I understood the claimant to be relying on three matters which evidenced that there was control sufficient to suggest the existence of a contract of service. The claimant claims that he was contracted to work 35 hours per week and can evidence the volume of work carried out. The respondent denies that there were any set hours per week or regular set tasks. The claimant has failed to produce any evidence of such contractual conditions and in his own email of 6 July he sets out that he is available during weekdays but not that there were specific weekly hours required or tasks to be completed. If he had no other work at the time (which is stated in the documentation) he may well have been available every week day but that is not the same as the respondent insisting that he was available for 35 hours per week. Furthermore, the sum paid was £1000 per month and this would be substantially less than the minimum wage for a 35 hour week. I do not find it likely that an international news television network would have approved payments for an employment contract whereby it agreed to pay an employee less than the minimum wage.
34. The claimant also refers to being prohibited from working for others whilst contracting with the respondent. Again, there is no evidence of this. Mr

Crutcher was open in his evidence that he did not want the claimant to provide information relevant to Gold Mafia to the BBC before the series aired and that was the catalyst for the contract. The claimant accepted payment, in part, on the basis that he would keep the information confidential, and he states as much in his witness statement. He states that the respondent refused for him to work for the BBC. I find that he was offered a monthly payment until the Gold Mafia series aired, in part as an incentive not to share the information with another journalist. He could have refused the offer. The fact that he may have had financial problems, as he claims, does not mean that the respondent was exercising control over him.

35. Finally, the claimant claims that he was prohibited from referring to Hopewell Chinoso on his social media pages by the respondent. I accept Mr Crutcher's evidence that he simply asked the claimant not to do so as it may be harmful to the success of the Gold Mafia series.
36. I find that there is no evidence that the respondent exercised any control over the claimant.
37. I have also considered other factors which may be relevant to whether a contract of service existed. I note that payment was made, at the claimant's request, to his company Media Origins Limited. The work is described in his invoices to the respondent as 'consultancy'. The claimant also describes it as consultancy in his email of 6 July 2021. These factors point to the contractual relationship being one of a self-employed contractor engaged in a contract for services. There was no evidence before me that the respondent was responsible for paying tax or national insurance on behalf of the claimant. Mr Sangha asked the claimant if he had ever had an Al Jazeera email address. He said that he had not. An unwritten contract can of course exist, but there are documents evidencing the claimant's relationship with the respondent and none of these provides even the slimmest basis on which it could be deduced that there may be an unwritten contract of service. The claimant claims to have been employed by a major news company but there is no evidence to show that he questioned the lack of a written contract or all of the usual benefits that would be expected from working for such a company. I also noted Mr Crutcher's use of the words 'your employment' in his email of October 2023 but I have not attached any importance to this single reference, by a layperson, to employment where there is no other evidence at all of an employment contract subsisting.
38. None of the matters listed in paragraphs 29 to 37 is determinative on its own of whether a contract of service existed but in considering the evidence in full I find that there is no evidence from which I could conclude that a contract of service existed between the claimant and the respondent, and I find the claimant was not an employee of the respondent.
39. For this reason, the claimant cannot bring a claim of unfair dismissal, as the tribunal only has jurisdiction to hear such a claim from an employee. There is no need to go on to consider the matter of time in these circumstances.

40. The claimant's claim of unfair dismissal is dismissed as the tribunal does not have jurisdiction to hear such a claim.

Employment Judge Anderson
Date: **26 August 2024**

Sent to the parties on: **28 August 2024**

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For the Tribunal Office