



EMPLOYMENT TRIBUNALS

Claimant

Mr P Lawrence

v

Respondent

Joshi and Welch Ltd

Heard at: London Central Employment Tribunal

On: 2 March 2017

Before: Employment Judge JL Wade

Appearances

For the Claimant: In person

For the Respondent: Mr M West, Consultant

Judgment having been sent to the parties and Reasons having been requested on 2 March, they are set out below.

REASONS

1. Mr Welch has decided to be bound by what I decide on the evidence, and I warned him that there was a good chance my decision could go either way, despite his saying that Mr Joshi has no authority to instruct Mr West to act for the respondent. As co-director with Mr Joshi he did not want to contest the claim. I have tried to avoid the detail of the dispute between the two directors which is now the subject of High Court litigation and so this hearing proceeds only because Mr Welch agrees. I am not making a judgement as to which director has authority to instruct Mr West or which director is right. Had Mr Welch applied to adjourn so that he could litigate the point I would not have resisted.

Background facts

2. The claimant was first employed by the respondent, Trade Mark Attorneys, in October 2011 as Accounts Manager; he and Mr Welch had

worked together before. He worked three days a week Monday-Wednesday running all the internal accounts/ book-keeping work.

3. In early 2015 the two directors, Mr Joshi and Mr Welch (the other directors were their respective wives), agreed to separate. Initially this was amicable but then they fell out.

4. The initial arrangement was that the respondent would stop trading in April 2015 and that the directors would split their respective clients between them in separate businesses. Mr Joshi says that the directors had their own clients so it was obvious whose client was whose. He has taken those clients who agreed to go with him and set up a new company. The strict legal position was that Mr Welch would continue as a director of the respondent which would change its name.

5. On 20 April they spoke to the staff and Mr Joshi offered them all a position his new company, Joshi Worldwide. Mr Welch was yet to decide what resource he needed so made no offers.

6. The claimant says he was not told how the work would be divided and the two directors did not speak to him because he was part time and no in work that day so he missed out.

7. The claimant decided he preferred Mr Welch's offer to work for him from home; he wanted to work from home and this was important to him. Both sides were offering continuity of service but he very possibly believed that because Mr Welch was keeping the business this was the better way to preserve continuity, and also they had a longer history of working together.

8. He may have worked briefly for Joshi Worldwide before deciding to work for Mr Welch but there is insufficient evidence to enable me to decide this and it is not material given my conclusion. Suffice to say that this was a time of turmoil, with the relationship between the two directors deteriorating rapidly, and unfortunately the staff and staffing issues became collateral damage. I am not pointing the finger of blame at either director in particular.

9. Following the deterioration of the relationship a number of the directors' plans were not implemented. Instead:

- a. The respondent's bank account was frozen, no financial or other activity.

b. The payroll provider ceased to be paid and stopped providing to service so the claimant did not get pay slips or pay.

c. In March 2015 Mr Welch had set up Icen Intellectual property IP Ltd, now called ICENI Law Ltd, in anticipation of the structural changes so this was available to him as a corporate entity through which to run his business. This was instead of the respondent which was now frozen.

d. Therefore no name change happened and instead Mr Welch issued a press release in the summer of 2015 in which he says that J and W would *not* be changing its name. instead, Icen will be “a new company which I have established.... which includes for example, Emma Sayward in administration and support and Patrick Lawrence (Accounts) (the claimant) have worked with me for over 10 years and will be known to you and your team”.

10. Mr Welch says that, contrary to the press release, he did not operate Icen on legal advice following the escalation of the dispute. Instead he worked personally to maintain the respondent’s clients pending resolution of the dispute through the courts or otherwise. This included paying the claimant and Ms Sayward out of his own pocket. It also included not billing any of the clients but instead accruing the professional charges incurred during this time.

11. Mr Joshi says that this explanation does not make sense and I have no means of deciding whether it does or not. I do know, however, that Mr Welch, who has been supporting Mr Lawrence actively in these proceedings, including providing disclosure, has not provided any evidence at all of his professional activity from June 2015 through to May 2016 whether in the name of the respondent or in the name of Icen.

12. The claimant was last paid by the respondent for the month of May 2015. Thereafter his work for the respondent ceased, or at least there is no evidence of him actually doing any work for the respondent at all. There is also no evidence of him doing any work for anyone else and he says that he did very little and that what he did was from home.

13. Thereafter, until the end of May 2016, the claimant received payments into his bank account from “Welch Mr D TA Icen” and “Icen Intellect PR” which Mr Welch says was a personal bank account which he named Icen in order to keep track of the payments being made.

14. Mr Welch says that following a mediation with Mr Joshi it became clear in around May 2016 that the dispute was not going to settle and so on legal advice he started actively to operate Icení and from May 2016 it issued its own invoices. His work from June 2015 was then invoiced by his personal company, Icení. It is significant that he felt entitled to bill for this work through this business as it had supposedly been done to keep Joshi and Welch ticking over, see paragraph 10 above.

15. The claimant says that he knew nothing about Icení being incorporated or about being his employer BUT he must have seen the name of Icení on his bank statements and wondered what the situation was. Also of course his working environment was entirely different to that before 20 April 2015. I wonder why, for example, if Mr Welch wanted to keep a record of work he was doing to the respondent he did not call the bank account something associated with the name Joshi and Welch or ask the claimant to help him given that he was paying him.

16. I can entirely understand, however, that the claimant was very confused by this time as the legal position in relation to his employment was and remains very unclear. Mr Welch kept saying not to worry.

17. In May 2016 Mr Welch told the claimant that he would no longer be able to pay him. The claimant got the impression that this was because he could not afford it any longer and Mr Welch says that once he was fully operational he realised he could not afford the support staff that he had been able to employ as Joshi and Welch.

18. So, after May 2016 the claimant was no longer paid. He wrote to both directors in July 2016 asking them to either carry on paying him or to make him redundant. He says that no one had ever told him that he was dismissed although it seems to me that being told by Mr Welch that he could no longer afford to pay him was the same thing.

19. The claimant says that Mr Welch tried to help him find other work and he had a week's work in November via him. He also did a week's work in December and has been fully employed from the beginning of January 2017.

20. The High Court litigation was issued in July 2016.

Conclusions

21. This is a claim for unpaid wages. There is no agreement at all as to who the claimant's employer was from May 2015. There are five possible scenarios:

21.1 The claimant left the respondent in April 21015 when he worked briefly for Joshi Worldwide.

21.2 If not, he resigned from for the respondent at the end of May 2015 and was employed personally by Mr Welch or Icení from then on and was made redundant in May/ June 2016.

21.3 The claimant's employment was transferred as a TUPE transfer to Mr Welch and he was made redundant in May/ June 2016.

21.4 The claimant was employed by the respondent until he was made redundant in May early June 2016 when the money ran out.

21.5 In May 2016 there was a TUPE transfer, or in anticipation of a transfer Icení dismissed him.

22. I have decided on scenario 2 because:

22.1 The claimant was not paid by the respondent after May 2015;

22.2 He could not be paid because the bank account was frozen;

22.3 There is no evidence that he did any work for the respondent after May 2015;

22.4 If he did work in the name of the respondent it was not with Mr Joshi's authority and the work was very negligible;

22.5 Anything that the claimant did for the respondent would have to have been with Mr Joshi's authority because he and Mr Welch remained directors, albeit locked in conflict;

22.6 There was no agreement between the directors that Mr Welch should carry on maintaining their Joshi and Welch clients and that the claimant should be employed to do this;

22.7 From May 2015 he was paid by Mr Welch/ or his company IcenI albeit that there is no evidence that he did work for him either;

22.8 The work done from May 2015 was invoiced by IcenI in May/ June 2016, this was Mr Welch's personal company and there is no suggestion that the respondent or Mr Joshi would benefit from the income generated. This is the decisive point.

22.9 No one argues that he was working for tw entities at the same time and since there was no cooperation between Messrs Joshi and Welch that would not have been possible.

23. Further, as Mr Joshi said, the obvious step following the breakdown of the relationship was to run separate companies. He believes that Mr Welch did work through IcenI and recalls that he was told by one law firm that they had decided to go with IcenI rather than Joshi Worldwide in late May/ early June 2015. Saldy I did not have enough evidence to make a conclusion possible but it does not matter for the purposes of this decision whether the claimant was employed by Mr Welch personally or by his company.

24. Also the High Court litigation has had a huge influence on how the players have conducted themselves and I suspect that part of the reason why the situation so unclear is that normal behaviour has been modified to try to suit the litigation. It is clear that both directors, as would be expected, are keen to promote their own positions in order to succeed in that litigation. This is not a criticism as such.

25. Quite how the claimant's employment ended is not clear because of the fluidity of the situation in what was effectively a war zone, and it is certainly not written down. My conclusion, on a balance of probabilities, the evidence is so unclear that that is all it could ever be, is that:

25.1 By accepting work with Mr Welch, trading personally as IcenI or, alternatively, through his company, the claimant resigned his employment with the respondent;

25.2 He was then redundant when he was dismissed by Mr Welch in early June 2016;

25.3 Unfortunately because he did not have continuity of service he would not be entitled to a redundancy payment. He may have been entitled to notice pay.

26. Therefore there is regrettably no chance at all that the claimant would be entitled to be paid by the respondent after May 2016 which is what he is claiming.

27. I am very sorry that I have not been able to promote a settlement in this case because I understand why Mr Lawrence feels aggrieved, but it is my job to apply the law.

Employment Judge Wade
20 March 2017