



EMPLOYMENT TRIBUNALS

Claimant: Mr A Karapeev

Respondent: Clipfine Limited

OPEN PRELIMINARY HEARING

Heard at: by telephone

On: 10 September 2020

Before: Employment Judge Truscott QC (sitting alone)

Appearances

For the claimant: in person

For the respondent: Mr G Lomas litigation consultant

JUDGMENT ON PRELIMINARY HEARING

The Employment Tribunal does not have jurisdiction under the Employment Rights Act 1996 (ERA) to hear the claimant's claim of unfair dismissal because:

- (1) the claimant was not an employee of the respondent and, in any event
- (2) does not have the qualifying period of employment with the respondent, accordingly, the claim of unfair dismissal is dismissed.

REASONS

Preliminary

1. At a telephone case management hearing dated 1 June 2020, it was decided that evidence on the following issues would be considered at an open preliminary hearing by telephone.

2. Issues
Who was the Claimant's employer?

Does the Claimant have the required length of service in order to bring a claim of unfair dismissal against the Respondent?

Does the Tribunal have jurisdiction to hear the complaint of unfair dismissal against the Respondent, due to the following reasons:

The Respondent not being the Claimant's employer.

The Claimant not having the required 2-years' service at the effective date of termination.

3. The claimant represented himself. The respondent was represented by Mr Lomas. There were a number of documents available to the Tribunal.

Findings

4. The Tribunal heard from the claimant that he worked for the respondent from 2014 through a number of agencies. There was no documentary evidence to support this evidence and Mr Lomas was unaware of it. The claimant does not identify a period of employment in his ET1 [4].

5. On 5 October 2015, the claimant incorporated A K Servicing Limited. The claimant was the director and owner of the company. It was not clear whether the company was used initially by the claimant but it was in use in 2018/9 when it contracted with Riverside Construction (Essex) Limited [53-56] There is a "with compliments" slip from Riverside to the claimant asking him to sign the contract again.

6. There are texts from Riverside to the claimant in February 2019 identifying weekly payments to him and a remittance advice from Riverside Construction to the Director AK Servicing Ltd with the claimant's name for March 2019.

7. The contract was terminated in May 2019.

8. A reference dated 31 May 2019 was provided by Riverside to the claimant at AK Servicing for the period from 19 November 2018 to 17 May 2019.

Law

9. The right to claim unfair dismissal is set out in section 94 of the ERA which provides:

(1) An employee has the right not to be unfairly dismissed by his employer.

Section 108 provides:

Exclusion of right

Qualifying period of employment

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years] ending with the effective date of termination.

Discussion and decision

10. The onus was on the claimant to establish that the respondent was his employer for the necessary period. There was no documentary evidence to support this and the claimant's own evidence seemed to accept that the employment was through agencies and was not direct. There was documentary evidence that Riverside Construction was in a contractual relationship with the claimant's service company AK Servicing Ltd in the period he claimed he was in the employ of the respondent.

11. The Tribunal does not accept that the claimant was (1) an employee of the respondent (2) for any period but particularly for a period of two years. The claim of unfair dismissal is dismissed.

Employment Judge Truscott QC
10 September 2020