



EMPLOYMENT TRIBUNALS

Claimant: **Mr J Lister**

Respondent: Brighton and Hove Albion Football Club Ltd

Heard at: London South On: 24 May 2022

Before: Employment Judge Martin

Representation

Claimant: In person

Respondent: Mr Roberts – Counsel

CORRECTED JUDGMENT

Under the provisions of Rule 69, the Judgment dated 25 May 2022 is corrected as set out above in bold type (Mr J)

The judgment of the Tribunal is that the Claimant was not an employee of the Respondent, and the Tribunal does not have jurisdiction to hear his claim for unfair dismissal. The Claimant's claim is therefore struck out for lack of jurisdiction.

REASONS

1. Oral reasons were given at the conclusion of the hearing. These written reasons are being provided at the request of the Claimant.
2. This preliminary hearing was listed to consider the Claimant's employment status is whether he was an employee for the purposes of determining his right to bring a claim for unfair dismissal.
3. S230 Employment Rights Act 1996 provides that an "employee" means an individual who has entered into or works under a contract of employment. No comprehensive statutory definition of 'employee' exists although a body of case law has developed various tests to distinguish a 'contract of service'

from a 'contract for services', none of which is conclusive. There is now an enormous diversity of working arrangements and the Tribunal when faced with the task of considering whether a claimant is an 'employee' must weigh all the factors put before it. These factors will include the provisions of the contract under which the claimant worked, the extent to which and the way in which the work was controlled by the Respondent employer, whether there was a requirement for personal service and mutuality of obligations between the parties.

4. The question as to whether the Claimant is an employee is a mixture of fact and law with no individual fact being determinative of the issue.
5. There were three contractual documents available to me all titled "TERMS OF ENGAGEMENT (MATCHDAY & EVENT SAFETY STEWARD)". Their dates are 19 August 2018, 9 March 202 and 6 July 2020. All three documents are identical. The common clauses relevant to the issue of employment status are:

"The Club cannot always predict the exact staffing levels it will require with regard to Matchday Event Safety Stewards. The Club therefore requires casual workers and it is entering into this agreement to record the terms on which a casual work relationship is entered into.

1. STATUS OF THIS AGREEMENT

This agreement governs your engagement from time to time by the Club as a casual worker. This is not an employment contract and does not confer any employment rights on you (other than those to which workers are entitled). In particular, it does not create any obligation on the club to provide work to you and by entering into this agreement you confirm your understanding that the Club makes no promise or guarantee of a minimum level of work to you and you will work on a flexible, "as required" basis. It is the intention of both you and the Club there be no mutuality of obligation between the parties at anytime when you are not performing an assignment, be that in relation to a football match or other event.

2. DISCRETION AS TO WORK OFFERED

It is entirely at the Club's discretion whether to offer you work and it is under no obligation to provide work to you at any time. The Club reserves the right to give or not give work to any person at any time and is under no obligation to give any reasons for such decisions.

3. NO PRESUMPTION OF CONTINUITY

3.1 Each offer of work by the Club which you accept shall be treated as an entirely separate and severable engagement (an assignment). The terms of this agreement shall apply to each assignment but there

shall be no relationship between the parties after the end of the assignment and before the start of any subsequent assignment.

3.2 The fact that the Club may offer you work on more than one occasion shall not confer any legal rights on you and, in particular, should not be regarded as establishing an entitlement for regular Work or conferring continuity of employment.

4. ARRANGEMENTS FOR WORK

4.1 The home fixture list for league matches will normally be made available to you prior to the start of the season but It is advisory and will not constitute a firm offer of work due to the fluctuating nature of the fixtures. The dates for cup games and other events will be made known to you as soon as reasonably possible. if you are aware that you may not be able to fulfil any of the possible assignments. If asked to perform them, then you should inform the Club that you will not be available for consideration.

4.2 Any firm offer of work, with details of the start time for working, will be sent to you by email or other electronic communications system that is In place from time to time shortly before the relevant match or other event. The notification will normally come from the Safety & Security Co-ordinator, who is to be regarded as your Line Manager for the assignment. Having been formally offered and accepted the assignment you must inform the Safety & Security Co-ordinator immediately if you will be unable to complete it for any reason. If the Club needs to cancel the assignment it will notify you as soon as reasonably practicable.

4.3 While any work that you are assigned will be that of a Matchday & Event Safety Steward the precise description and nature of the role may vary with each assignment and you may be required to carry out other duties as necessary to meet the business needs of the Club.

5. TRAINING

5.1 In order to be offered an assignment you must have completed training, which consists of eleven modules, relevant to the role of a Matchday & Event Safetyteward. You will also be signed up to complete an NVQ level 2 qualification

6. I also had before me an Earnings Schedule showing the payments made to the Claimant during his engagement with the Respondent. This showed range of payments between July 20 and April 21.
7. The Claimant provided several document illustrating how the Respondent would ask if he was available for work. He said that there were about 165 such emails received. These emails gave the dates of work offered, and

said, "please confirm that you are able to do these shifts" or "this is a notification of a firm offer to work an assignment as a steward..... Having been formally offered this assignment you are automatically deemed to have accepted it. You must inform me immediately if you will be unable to complete the assignment for any reason.." or "It is vitally important that if you know you will not be available for any of the above fixtures, that you let us know now, in order that we can plan in advance. Any notification of a firm offer of a work assignment will be sent shortly before each game.."

8. I have carefully considered the documents provided including the documents provided by the Claimant. They include offers of work from the Respondent which the Claimant could agree to or not as he wished without given any reason. The Claimant says he never refused work and was never off sick for example, when he was booked to work. He did however agree that he could refuse work.
9. I find the documents the Claimant provided accord with the terms of the Terms of Engagement.
10. The Claimant says worked a lot in the three years with the Respondent and never refused work offered. However, this does not itself determine employment status.

11. In order to bring a claim for unfair dismissal, must be an employee. This is set out in s94 ERA 96:

"An Employee has the right not to be unfairly dismissed by his employer.

12. C referred to remedies section in ERA s111

" (1) A complaint may be presented to and employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

This section does not confer jurisdiction on the ET to consider a claim. S94 makes it clear that is an employee only who can bring such a claim

13. am satisfied having listened to both parties and considered the evidence both parties have presented, that the Claimant was a worker and not an employee. The terms of engagement are very clear, and the emails the Claimant sent accord with the provisions of the contract. I understand that the Claimant considers other matters such as training to be important, however without mutuality of obligation there can not be an employment contract. There is no reason to go behind the express terms of the terms of engagement. The evidence shows that the reality of the working relationship reflects the contractual terms.
14. The Claimant referred in documents he provided to S1 ERA. This is not relevant to the question of employment status. This refers to requirement to give employees and workers a s1 statement of particulars of employment. Does not mean the terms employee and worker interchangeable. This right happens to be applicable to both workers and

employees. The right to claim unfair dismissal is only available to employees and not workers.

15. The Claimant says it is not right that only employees can bring claims of unfair dismissal. This is however not something I can consider. The Government sets the legislation, and it is my role to enforce that legislation. As it stands the legislation says only employees can bring a claim of unfair dismissal. Therefore, the Tribunal has no jurisdiction to hear the Claimant's claim and his claim is therefore struck out.

Employment Judge Martin
Date 25 May 2022
Corrected on: 16 June 2022