



# EMPLOYMENT TRIBUNALS

## At an Open Attended Preliminary Hearing

**Claimant:** Mr F Oladejo  
**Respondent:** Premier Security 247 UK Ltd

**Heard at:** Nottingham  
**On:** Monday 25 January 2021  
**Before:** Employment Judge M Butler (sitting alone)

### Representation

**Claimant:** In person  
**Respondent:** Ms A Hallam, Solicitor

## JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant was not an employee of the Respondent at the material time and the claim of unfair dismissal is struck out as having no reasonable prospect of success.
2. The claims for sick pay and holiday pay are not well-founded and are dismissed.
3. The claims of race discrimination have little prospect of success and the Claimant is ordered to pay a deposit of £50 as a condition of these claims proceeding.

## REASONS

1. The Claim Form was submitted to the Tribunal on 17 June 2020 after a period of early conciliation. The Claimant had worked for the Respondent as a Security Guard from March 2017 until 23 April 2020. He claims unfair dismissal, direct race discrimination, holiday pay and sick pay.
2. The Claimant claims that he applied for employment with the Respondent on 16 January 2017 and began working for them on 20 March 2017. He said he was at all times an employee and always understood that to be

the case. Accordingly, he claims that his dismissal was unfair although he does not give reasons for this in his Claim Form. In his statement before the Tribunal today, he said he was dismissed without being taken through a proper disciplinary procedure and because he was alleged to have been aggressive with the Respondent's personnel on the telephone.

3. The Respondent argues that the Claimant was never an employee during his time with the Company. On commencing work, he signed a sub-contractor agreement and subsequently used his own accountant, provided his own indemnity insurance and paid his own travelling expenses.
4. On 17 September 2020, there was a preliminary hearing by telephone before my colleague, Employment Judge Camp. He considered the issues in the case and made case management orders. He set down the case for today's hearing to determine, inter alia, whether the Claimant was an employee of the Respondent and whether any of the complaints he wishes to make had little reasonable prospects of success because of time limits. This latter issue related to the Claimant's claim of race discrimination which, although ticked in the Claim Form, was not otherwise particularised. Notwithstanding EJ Camp's clear and concise case summary and case management orders, the Claimant attended today's hearing seemingly believing it was to deal with race discrimination only.

### **The issues**

5. There were essentially two issues before me;
  - (i) whether whilst working for the Respondent the Claimant was an employee or self-employed worker, and
  - (ii) whether his claims of race discrimination are out of time and should be subject to a deposit order before being allowed to proceed.

### **The evidence**

6. There was a bundle of documents comprising 254 pages and any references to page numbers in this Judgment are to page numbers in the bundle. I also heard evidence from the Claimant and for the Respondent from Mr Louis Cartledge, Operations Manager.

### **The factual background**

7. The Claimant produced a very long witness statement which was somewhat rambling in nature. Unfortunately for the Claimant, this also matched his oral evidence, which was at times difficult to follow. I also noted that the Claimant's oral evidence was not supported by any documentation and such documentation as was produced did not support his oral evidence. His evidence was essentially that he applied for employment with the Respondent as a Security Guard. It was not until he

received his first payslip that he realised he was self-employed. This was because he had claimed expenses for travel which were not paid. He denied that when he was interviewed he was advised to instruct an accountant to deal with his tax liability and he could use the Respondent's accountant at a cost if he wished. A major issue with the Claimant's evidence is the fact that for his time working for the Respondent he had instructed his own accountant to deal with HMRC matters. I found it difficult to understand how this arrangement would have subsisted without the accountant confirming to the Claimant that he was self-employed.

8. There is a further issue in that the Claimant initially indicated that he only worked for the Respondent yet, under cross-examination by Ms Hallam, he confirmed that he did accept assignments from another company for whom he worked as a doorman and this lasted into 2018.
9. The Claimant also seemed to change his evidence from always being an employee to accepting that he was self-employed from May 2017. In cross-examination he confirmed giving documents to his accountant to prepare his accounts.
10. He also argued that he was still disputing he was self-employed in April 2019 but this completely contradicts his case that he was employed throughout. Further, at page 115, the Claimant emailed Mr Cartledge on 15 June 2019 and, referring to Mr Cartledge's email to him a few minutes earlier concerning discussions the Respondent had had about self-employment with HMRC, said: "*Thank you very much Louis and pls keep me on self-employed as long as you allow (sic) to do so.*" The Claimant also confirms that he had described himself as a self-employed security worker to a nurse at the Nottinghamshire Drug and Alcohol Support for People and their Families Organisation.
11. The Claimant also attempted to say he had Company benefits as an employee as well as a Company mobile 'phone and car. When asked about this, it transpired that the gym membership he claimed to have been given as an employee was in fact a free day pass which was given by the gym to the Respondent for its workforce and the Claimant subsequently paid for his membership himself. His Company mobile 'phone was given to him for a period of 5 months as well as a car to enable him to move and communicate from site to site. He confirmed he did not take the mobile 'phone home but claims to have taken the car home.
12. The Claimant was also referred to page 133 where he says quite clearly in an email to Mr Cartledge on 26 February 2020 that he is happy to continue working on a self-employed basis because he was able to work longer hours and asking to be informed beforehand if the Respondent planned to change his employment "*but I want to stay as self-employed if possible*".
13. The matters referred to above in relation to the Claimant's evidence are not the only matters which were revealed which contradict his argument that he was employed. His evidence was contradictory and totally at odds

with clear comments to Mr Cartledge to the effect that he wished to remain self-employed. The fact that he now claims not to have understood the difference between being employed and self-employed is simply not credible.

14. Mr Cartledge gave clear and concise evidence. He said the Claimant went through the interview process for sub-contractors. If successful, sub-contractors were sent a welcome pack which included the sub-contractor's agreement. The Respondent had an agreement as to the maximum number of hours employees could work but not sub-contractors.
15. Referring to the fact that the Claimant had provided an employment status check he completed on a Government website, Mr Cartledge confirmed that it had concluded the Claimant was an employee because he answered the questions based on the statement of terms and conditions of employment that would have applied to him after 16 May 2020. This was relevant in that Mr Cartledge explained that the Respondent had been in discussions with HMRC about its use of sub-contractors as opposed to employees, as a result of which the Respondent did change the status of some sub-contractors to employees. This did not immediately affect the Claimant but he was kept well informed of the discussions and the changes that were ultimately going to apply to him whereby he would become an employee. This is how the emails from the Claimant expressing a desire to remain self-employed arose.
16. An offer of employment was made to the Claimant but was then withdrawn due to his aggressive behaviour towards to Respondent's employees.
17. I found Mr Cartledge's evidence to be perfectly plausible, delivered without hesitation and entirely reliable. Wherever there was a dispute on the evidence, I preferred Mr Cartledge's evidence to that of the Claimant.
18. In relation to the Claimant's race discrimination claims, EJ Camp ordered that they be considered in respect of time limits only. The Claimant was ordered to particularise the incidents of race discrimination upon which he seeks to rely and he did this by listing eight acts of discrimination but not in the format ordered by EJ Camp. They are still not sufficiently particularised.
19. These alleged acts by the Respondent date back to 2018, the last being 26 July 2019. Only the final allegation in respect of an incident on 20 April 2020 is in time and the Claimant has failed to set out why what happened amounted to race discrimination.
20. Upon reviewing all the documents in this case, I note that much of what the Claimant says is in the form of hearsay or hypothesis and, although I consider the race discrimination allegations in relation to time limits only, I cannot help but notice that the claims are extremely weak. The Claimant has made allegations which are not supported by documentation and attributes racial connotations to comments without any evidence of

complaint.

21. Thus, all but the 20 April 2020 allegations are very considerably out of time. The last allegation is in time but not adequately particularised. The Claimant did take legal advice but now claims, despite the fact that he must have had knowledge of the alleged acts of race discrimination which he now makes, that he did not discuss this matter with the solicitor he spoke to. He has also had further assistance from an organisation called We Care Services but the extent of that assistance is unknown. Given his access to advice and the submission of his Claim Form, I do not consider it just and equitable to extend time to allow the first seven allegations of race discrimination to be submitted out of time. In relation to the last allegation, given all the circumstances, I find it has little reasonable prospect of success. Further, I do not consider that the last claim of race discrimination has reasonable prospects of success.
22. The Respondent asked for a deposit order which I refer to in my conclusions.

### **Submissions**

23. The comments made by the parties by way of submissions, if any, were fully considered in reaching my conclusions.

### **Conclusions**

24. It is abundantly clear to me that, not only was the Claimant never an employee of the Respondent, but he knew he was self-employed and, indeed, wished to continue in that status as evidenced in correspondence to the Respondent which I have already referred to above.
25. I do not accept the Claimant's evidence that he was unsure of his employment status. The Respondent was in no doubt but, even so, reviewing the case law on employment status it is clear, as noted in ***O'Kelly & others v Trusthouse Forte plc [1983] ICR 728*** where the Court of Appeal endorsed the statement that a tribunal must –

*“... consider all aspects of the relationship, no single factor being in itself decisive and each of which may vary in weight and direction, and having given such balance to the factors as seems appropriate, to determine whether the person was carrying on business on his own account.”*

I also bear in mind the concept of an “irreducible minimum” without which it would be all but impossible for a contract of employment to exist as endorsed by the House of Lords in ***Carmichael and another v National Power plc [1999] ICR 1226 HL***.

26. In considering the factors which are relevant in establishing an employment relationship, I note firstly the degree of control which the Respondent had over the Claimant. I find that the reality of the situation is that, apart from allocating shifts, the Claimant was left to his own devices

in providing security at the Respondent's clients' sites. The provision of shifts is an important element in this case because all the evidence suggests that it was the Claimant who called the tune in terms of how many shifts he was allocated. There are emails from the Respondent confirming that other workers were complaining that the Claimant was being given more shifts than them and one of the Claimant's reasons for remaining self-employed was that he was not able to work as many hours if he was an employee.

27. I also consider mutuality of obligation. Whilst the Respondent provided shifts to the Claimant, it was under the sub-contract agreement not obliged to do so. Further, the Claimant was not obliged to accept them. The fact that he did does not necessarily mean there is mutuality of obligation. Indeed, the Claimant's own evidence was that, certainly on more than one occasion, he undertook other work for another company.
28. Considering financial matters, the Claimant was responsible for his own indemnity insurance and the cost of travelling to and from the Respondent's clients' sites. He was not entitled to travelling expenses. Further, for most of the time he worked for the Respondent he used his own accountant to deal with tax and national insurance matters. From the moment he used his own accountant, there were no deductions made by the Respondent in respect of tax or national insurance.
29. Finally, I have considered the intentions of the parties. The Respondent is adamant that the Claimant was self-employed. The Claimant, through his correspondence, expressed his very strong preference to continue his self-employed status when it was proposed to offer him a contract of employment. Whilst this in itself is not determinative of employment status, I consider it to be a very strong indication that the Claimant knew from the start of his relationship with the Respondent that he was self-employed and wanted to continue with that status as long as he could.
30. For the above reasons, I find the Claimant was a self-employed sub-contractor.
31. In relation to the claims of race discrimination, as already noted above, my remit today was to determine whether the claims of race discrimination had little reasonable prospect of success considering time limits only. Only one of the allegations, as noted above, is in time. I have indicated that all of the discrimination claims have little reasonable prospect of success and a deposit order should be made. In relation to the eighth allegation, in complying with the remit set down by EJ Camp, I need to justify why a deposit order should be made when the allegation is in time. I do this by reference to rule 6 of the Tribunals Rules of Procedure. This was set out at paragraph 33 of EJ Camp's order in terms of the options available to the tribunal if an order is not complied with. In this case, the Claimant has not complied with EJ Camp's order because he has not properly set out his allegations in the format required. This was his second opportunity to do this so that both the Respondent and the Tribunal could

better understand the nature of his race discrimination claim. The Respondent still has insufficient information on which to settle its response.

32. Rule 6 provides that in addition to the courses open as set out in paragraph 33 of EJ Camp's order, "*The tribunal may take such action as it considers just ..*" which may include all or any of the four matters set out in paragraph 33 but those matters are not mutually exclusive.
33. Whilst I appreciate the Claimant is a litigant in person, EJ Camp's order was very precise in what the Claimant must do and, despite this, he has failed to comply. Accordingly, I consider it appropriate to make a deposit order in respect of all of the race discrimination claims. The Claimant gave evidence as to his financial means and he said he was in receipt of universal credit of £650 per month and his main outgoing was rent of £340 per month. I have therefore limited the amount of the deposit to £50.

---

Employment Judge M Butler

Date: 17 March 2021

JUDGMENT SENT TO THE PARTIES ON

18 March 2021

.....  
FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.