

General Case Digest

Department of Business, Enterprise and Regulatory Reform v Adams

Citation

[2008] All ER (D) 254 (Mar)

Hearing Date

18 March 2008

Court

Queen's Bench Division, Divisional Court

Judge

Dyson LJ and Lloyd Jones J

Representation

Jonathan Ashley-Norman (instructed by the Legal Services Group A3 of the Department of Business, Enterprise and Regulatory Reform) for the appellant. The respondent appeared in person.

Abstract

There was nothing in the language of reg 26(5) of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, which excluded the case where there was to be publication in the future. Therefore, it was possible to charge a parent, seeking modelling work for their child, a fee in advance. There could also be an estimated cost for something that was to be done in the future, or where something had been done in the past but the ascertainment of the exact cost was difficult. The important factor was that there was nothing in the language of the regulation which indicated that the work seeker had to be included in the publication in order for reg 26(5)(ii) to be disapplied. In those circumstances it followed that the district judge had been correct to find that there was no case to answer where the respondent had been charged with offences contrary to s 6(1) of the Employment Agencies Act 1973.

Catchwords

Criminal law - Employment agency - Circumstances in which fees to be charged to work-seekers - Respondent receiving fee from parents of children seeking modelling work - Respondent charged with offence of receiving a fee - District judge finding no case to answer - Whether respondent's circumstances falling within exception in regulations - Whether district judge correct to find no case to answer - Employment Agencies Act 1973, s 6(1) - Conduct of Employment Agencies and Employment Businesses Regulation 2003, SI 2003/3319, reg 26.

Summary

Section 6(1) of the Employment Agencies Act 1973 provides: '(1) Except in such cases or classes of case as the Secretary of State may prescribe--(a) a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment; (b) a person carrying on an employment business shall not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person; (c) a person carrying on an employment business shall not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the purpose of finding or

seeking to find a third person, with a view to the second person becoming employed by the first person and acting for and under the control of the third person.'

Regulation 26 of the Conduct of Employment Agencies and Employment Businesses Regulation 2003, SI 2003/3319, so far as material, provides: 'Circumstances in which fees may be charged to work-seekers ... (2) Where paragraph (1) applies, subject to paragraph (5), any fee charged by the agency may consist only of a charge or commission payable out of the work-seeker's earnings in any such employment which the agency has found for him ... (5) Paragraph (2) shall not apply to any fee charged to a work-seeker by an agency in respect of the inclusion of information about the work-seeker in a publication provided that--(a) the publication is wholly for one or both of the following purposes, namely the purpose of finding work-seekers employment in, or providing hirers with information about work-seekers in relation to, any of the occupations listed in Schedule 3; and (b) either--(i) the only work-finding service provided by the agency or any person connected with it to the work-seeker is the service described in this paragraph; or (ii) the fee charged to the work-seeker amounts to no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker in the publication; and (c) in addition to the requirements in regulations 13, 14 and 16, in so far as they are applicable, the agency has, before it entered into the contract with the work-seeker by reference to which the fee is to be charged, made available to him a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in which it is offering to include information about him ...'

The respondent pleaded not guilty to two offences contrary to s 6 of the Employment Agencies Act 1973, namely of being a person carrying on an employment agency who received a fee for providing services for the purpose of finding or seeking employment. Before the district judge in the magistrates' court, evidence was heard that two complainants had registered their children with the agency in order that they should be found modelling work. They had both paid a fee and had expected that professional photographs would be taken of their children and included on the agency's website. The district judge found that the respondent operated in accordance with reg 26 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and therefore was exempt from the prohibition in s 6 on charging a fee. The district judge said that the respondent operated in a manner usual or commonplace within the industry and that at the time the informations were laid, the website contained information which would be regarded as a publication wholly for the purpose of finding work-seekers employment in, or providing hirers with information about work seekers in the model industry as stipulated by reg 26(5)(a). She further found that the respondent was engaged in seeking work by way of information on its website and that the work-seekers had access to the website on which details could be viewed as required by reg 26(5)(c) and that there was no evidence that the monies charged amounted to more than a reasonable estimate of the costs of production and circulation of the website of the agency as required by reg 26(5)(b)(ii). She accordingly ruled that there was no case to answer. The prosecution appealed by way of case stated.

An issue arose as to the construction of reg 26.

The appeal would be dismissed.

There was nothing in the language of reg 26(5) of the 2003 Regulations which excluded the case where there was to be publication in the future, therefore, it was possible to charge a fee in advance. There could also be an estimated cost for something that was to be done in the future or where something had been done in the past but the ascertainment of the exact cost was difficult. The important factor was that there was nothing in the language of the regulation which indicated that the work seeker had to be included in the publication in order for reg 26(5)(ii) to be disapplied.

It followed that, in the instant case, the district judge had been entitled to hold that there was no case to answer.

Dilys Tausz Barrister.

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