EMPLOYMENT TRIBUNALS

Ms C LUCIANO

Claimant

-and-

KHAIRALLAH ABID JASIM

Respondent

PRELIMINARY HEARING

Heard at: London South (Croydon)

On: 21 February 2017

Before: Employment Judge Crosfill

Appearance:

For the Claimant: Mr J Hitchens, Free Representation Unit

For the Respondent: Mr Z Rahman of Rahman Lowe Solicitors

JUDGMENT

1. That subject to the judgment below, the claims presented by the Claimant were presented in within the relevant time limits.
2. The Claimant was at all material times an employee and worker for the purposes of Section 230 of the Employment Rights Act 1996.

REASONS

1. Having considered the matter on the papers Employment Judge Freer directed that there should be a preliminary hearing to determine the following issues:

"a) Whether the claim should be dismissed because the claimant is not entitled to bring it if the statutory time limit has expired;

b) Whether the claim should be dismissed because the claimant is not entitled to bring it if there were not an employee of the respondent as defined in section 230(1) and (2) of the Employment Rights Act 1996;

c) Whether the claim should be dismissed because the claimant is not entitled to bring it if they were not a worker of the respondent as defined in section 230(3) of the Employment Rights Act 1996"

2. There was before me an agreed bundle of documents. The Claimant gave evidence on her own behalf and Sura Jasim, who represents the Respondent pursuant to a Lasting Power of Attorney, gave evidence on behalf of the Respondent. Having heard that evidence, I made the following findings of fact.

3. The Respondent was, prior to his retirement, an NHS Consultant. He is now 87 years of age. Unfortunately he is in declining health having suffered from Parkinson's disease, prostate cancer and a stroke. He was not fit enough to attend the hearing.

4. In 2014 the Respondent had been discharged from hospital and, following a period in respite care, was to return home. Because he was frail, he sought the services of a live in carer to assist him at home. He asked his niece Sura Jasim to help him find somebody to look after him.

5. The Claimant comes from the Philippines. Prior to her involvement with the Respondent she had been working as a carer. She had spent at least two years acting as a carer for a man with severe learning disabilities. The Claimant at the time was in the United Kingdom on a domestic worker visa. Sura Jasim learned of the Claimant through a friend of a friend who had employed the Claimant as a housekeeper.

6. It was agreed between the Claimant and Respondent that the Claimant would commence work as a carer living in the Respondent's house. Her duties included carrying out housework, cooking meals and looking after the Respondent. It was initially agreed that the Claimant would work on six days a week having a free day on Sunday.

7. The rate of pay was agreed at £300 per week. This was paid initially in cash but latterly was paid by bank transfer. It seems that no deduction of tax or national insurance contributions was made. There was no express discussion between the parties as to either party's liability to pay these.

8. The Claimant needed to renew her visa. She had instructed immigration solicitors in Kilburn to act for her. As part of the Visa application process she needed to produce a Contract of Employment. She gave evidence that her solicitor had completed a blank pro forma contract of employment on a standard Home Office template. That pro forma described her duties as "cooking, cleaning, other household chores and looking after Dr Jasim". It gave her salary is £300 per week. It said that she was entitled to one hour off during the day and two days off at the weekend. It provided that either party should give four week's notice. The copy of

the pro forma supplied in the agreed bundle was signed by the Claimant but in the box allocated for the employer's signature it had the name of the Respondent.

9. The Claimant said that she had taken the document from her solicitor and asked Sura Jasim to sign it. She says that Sura Jasim did so but in the name of the Respondent. Sura Jasim denies having ever signed that document. Her evidence was that if she had done so she would have used her own name and not that of her Uncle.

10. This was a difficult factual dispute to resolve. On the one hand the terms of the written agreement were broadly what had been agreed orally and were uncontroversial. However, there were some additional terms such as the notice period which I heard no evidence to suggest had been expressly agreed. Mr Rahman, on behalf of the Respondent, argued that the fact that the agreement was dated in the same handwriting as the contractual terms cast doubt on its veracity. I did not consider that this took the matter much further one way or the other. It is not so unusual for dates to be added by a third party. On the other hand, I accept that it was somewhat unlikely that Sura Jasim would have signed a document in the name of her uncle. In this rare instance I fall back on the burden of proof. It is for the Claimant to establish that the document accurately reflects the agreement. The standard of proof is the civil standard, more likely than not. I cannot find that it is more likely than not that this document was signed on behalf of the Respondent. I should make it clear that does not amount to a finding that it was a false document. Indeed, as I have indicated the terms included are broadly non-contentious.

11. The Respondent's health gradually declined such that, by July 2016, he needed almost 24-hour attention. The Claimant was no longer able to sleep in her own room but slept in a cot in the Respondent’s bedroom. He had difficulties sleeping and would often wake during the night. As a consequence of this the Claimant was often not able to take the time off that she had agreed. It is accepted in the ET3 that for a period or 24 weeks the Claimant worked for 7 hours on a Sunday. The Claimant says that she worked more than that but it is common ground that on 13 May 2016 she was given the sum of £2,000 to reflect the additional work she was doing.

12. On occasions when the Claimant needed to carry out errands on her own behalf it fell to her to organise cover. An example of this which was canvased in the evidence was when she had to visit her solicitors. The Claimant had asked Sura Jasim to help her with her workload but she was left to make all necessary arrangements herself. She therefore turned to 2 or 3 people she knew and trusted to assist her on the odd occasion when she was unable to care for the Respondent alone. Sometimes this was to enable her to go out and, other times, just because she needed additional assistance. When the Claimant arranged for additional assistance the additional carers were paid by the Respondent.

13. As a matter of subjective belief the Claimant, having lived in the United Kingdom for some time, thought that she was entitled to 4 weeks’ holiday per year. She was unable to take any holiday in her first year of employment.

14. In May 2016 the Claimant had a pressing need to return to the Philippines. Her brother was ill and in a coma. She asked Sura Jasim whether she could take two

months' holiday. In her mind she was entitled to do so as she had not taken her holiday the year before.

15. The Claimant's request prompted Sura Jasim and the Respondent to consider some renovations to the property. It was decided that when the Claimant was away the Respondent would go into a care home and the property would be renovated.

16. The Claimant left for the Philippines on 4 July 2016. The Respondent entered a care home. Sura Jasim had asked the Claimant to leave her keys behind but the Claimant forgot to do so. She took only such possessions that she needed with her leaving a quantity of cloths in her room at the Respondent's house. She also left a suitcase with the neighbour with whom she had a good relationship.

17. There was no contact between the Claimant and Sura Jasim whilst she was away. On 11 September 2017 the Claimant returned. It was late at night by the time the Claimant arrived at the property and when she did so she discovered that the locks had been changed. She went to the neighbour's house and from there telephoned Sura Jasim. Sura Jasim took exception to being telephoned at that time of night and told the Claimant that the Respondent was staying in the care home and that her services were not required.

18. It was the Respondent's case that when the Claimant had left to go to the Philippines there had been a mutual termination of the contract and, that whether or not she was reengaged upon her return, would depend on the circumstances. As a matter of fact, I find that the Claimant used no express words of termination and nor did Sura Jasim. I further find that there was no mutual agreement to terminate the arrangement. I consider that that is entirely inconsistent with:

    18.1. the fact that the Claimant bought a return ticket: and

    18.2. that when she arrived back in the United Kingdom she made her way, late at night, immediately to the home of the Respondent; and

    18.3. when she left she left a quantity of clothing in her bedroom at that property; and

    18.4. that when she left it had been anticipated that the Respondent would only be moving out for the purpose of renovations being carried out.

19. I did consider whether leaving a suitcase with the neighbour was inconsistent with a subsisting relationship but I do not believe that it is. It showed that the Claimant expected to return to the area and is just as consistent with a desire to protect possessions during building work. I also considered whether the fact that the Claimant was asked for the door keys was inconsistent with my findings above. I accept that this evidence might point away from my conclusion but as the other matters so strongly point in the opposite direction it is not a significant matter and again might be explained by the need to give spare keys to the builders. Finally, I considered whether the fact that the absence was for 2 months informed my decision. I do not think that it does. The Claimant was a low paid domestic worker. It is unsurprising that she would attempt to "save up" her holidays to make visits home worthwhile.

20. For these reasons I reject the Respondent's case, and where necessary Sura Jasim's evidence, that there was a termination of the relationship in July 2016 either by a mutual agreement to terminate or by a resignation or dismissal. Instead I find that there was a common understanding and agreement that the Claimant would return to work after her 2 months leave. I do not have to make any finding about the alleged agreement that the Claimant would be reimbursed for the cost of her flights upon her return.

The law to be applied

21. A contractual arrangement to work for an indefinite period does not terminate simply because the person who is to perform the work absents themselves from the workplace. A resignation will not be implied from such circumstances ***Zulhayir v J J Food Service Ltd*** **UKEAT/0593/10/SM**.

22. It may terminate either by dismissal, resignation or mutual agreement. Where the contract terminated by dismissal the termination is only effective when the dismissal is communicated to the employee. The date upon which a dismissal will take effect may differ depending upon whether the rights asserted are statutory or contractual rights ***Gisda Cyf v Barratt*** **[2010] 4 All ER 851**but there will be no dismissal unless there is communication of the decision to dismiss.

23. In respect of the claim relating to the alleged failure to provide a Section 1 statement and any claims advanced as unlawful deductions from wages under Part II of the Employment Rights Act 1996 Claimant the relevant definitions of "employee" and "worker" are set out in Section 230 of the Employment Rights Act 1996. That reads as follows:

230 Employees, workers etc.

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

24. For any claim advanced pursuant the Employment Tribunals (Extension of Jurisdiction) Regulations 1996 the relevant definition of employee is found in Section 42 of the Employment Tribunals Act 1996. Which states:

"'employee' means an individual who has entered into and works under (or, where the employment has ceased, worked under) a contract of employment"

25. For any claim brought under the Working Time Regulations 1998, where claims can be made by "workers" the definition of worker which is found at Regulation 2 is the same as that found in Section 230(3) of the Employment Rights Act 1996.

26. An essential element in a contract of employment is sufficient mutuality of obligations. These are an obligation on the employer to provide work and a corresponding obligation on the employee to accept such work see ***Carmichael v National Power plc*** **(1999) ICR 1226**.

27. In ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance*** **[1968] 2 QB 497** Mr Justice McKenna suggested that the proper test as to whether a contract should be held to be a contract of employment was:

"A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.

I need say little about (i) and (ii).

As to (i). There must be a wage or other remuneration. Otherwise there will be no consideration, and without consideration no contract of any kind. The servant must be obliged to provide his own work and skill. Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be: see Atiyah's Vicarious Liability in the Law of Torts (1967) pp. 59 to 61 and the cases cited by him.

As to (ii). Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted.

> *"What matters is lawful authority to command so far as there is scope for it. And there must always be some room for it, if only in incidental or collateral matters." - Zuijs v. Wirth Brothers Proprietary, Ltd.*

28. Common to both the tests for employment or worker status is an obligation to provide services personally. The extent to which a limited power to substitute is consistent with that requirement has been recently reviewed in ***Pimlico Plumbers Limited & Charlie Mullins v Gary Smith*** **[2017] EWCA Civ 51** where it was said (at para 84):

> *"In the light of the cases and the language and objects of the relevant legislation, I would summarise as follows the applicable principles as to the requirement for personal performance. Firstly, an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality. It will depend on the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional. Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance. Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance. Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance."*

29. The definition of a worker is deliberately wider than that of an employee. In ***James v Redcats (Brands) Ltd*** **[2007] IRLR 296** it was said:

> *"The definition of a worker is very wide, no doubt intentionally given the purpose of the legislation. It is to be noted that it is identical to the definition found in s.230 of the Employment Rights Act and the Working Time Regulations 1999. There are three elements to the definition. First, there must be a contract to perform work or services. Second, there must be an obligation to perform that work personally. Third, the individual will not be a worker (or indeed a home worker) if the provision of services is performed in the course of running a profession or business undertaking and the other party is a client or customer. In practice the last two are interrelated concepts…."*

30. The second and third aspects of this test was further explained in ***James v Redcats*** where it was said:

> *"An alternative way of putting it may be to say that the courts are seeking to discover whether the obligation for personal service is the dominant feature of the contractual arrangement or not. If it is, then the contract lies in the employment field; if it is not – if, for example, the dominant feature of the contract is a particular outcome or objective and the obligation to provide*

personal service is an incidental or secondary consideration, it will lie in the business field."

31. Insofar as it is necessary I will deal with time limits below.

Discussions and Conclusions

Time

32. It is appropriate to deal firstly with the issue of whether the claims were presented in time. The matter was argued before me on the basis that, unless there was a termination of contract on 4 July 2016, the claims were presented in time. That is certainly true for any claim where time ran from the date of the Claimant's return from the Philippines. I shall first deal with the question of whether there was or was not a termination of contract on 4 July 2016.

33. As I have set out above there will be no termination of a contract with ongoing obligations without either mutual agreement or by dismissal or resignation. All of these possibilities require some communication of intention. In the present case I have rejected the Respondent's case that there was any conversation amounting to a mutual agreement that the contract would terminate. No words of resignation or dismissal were alleged and in any event I find that none were used. I consider that the reality of the situation was that the Claimant believed that she was going home on a period of leave. That carries with it an assumption that she would return and resume her duties. That is the most likely explanation of her conduct. In the circumstances the contract did not terminate until 11 September 2016 when the Claimant was told that her services were no longer required.

34. The Claimant has made claims for (1) wages for "overtime" (2) holiday pay (3) the cost of flights she says were agreed; and (4) notice pay; and (5) a section 1 statement. The claim for wages could have been brought under Part II of the Employment Rights Act 1996 or (given my finding below as to status) under the Employment Tribunals (Extension of Jurisdiction) Order 1994. However, the time limit for the Part II claim would run from the relevant unlawful deduction from wages or the last in any series of such deductions. The time limit if the claim was made under the Extension of Jurisdiction order would commence on 11 September 2016 and, following my finding above, would be in time. I heard no argument as to whether or not the same claims would be in time if framed as claims for unlawful deductions from wages. Subject to the paragraph below I leave that issue open to the Respondent to argue at the full hearing.

35. Had I considered that the contract terminated on 4 July 2016 then all of the claims would have been presented out of time. I was urged to find that given that the Claimant had spent 2 months in the Philippines it was not reasonably practicable to present the claims in time. I do not accept that contention. The Claimant arrived back in the United Kingdom at a time when she had just under a month to contact ACAS. She had no compelling explanation why she took no steps to protect her position. She did have the assistance of solicitors by 6 October 2016. The Claimant did not notify ACAS until 14 October 2016 10 days after the primary time limit expired. Proceedings were not then issued for a further 2 months. I was urged to accept that the Claimant was vulnerable and had special difficulties making it impracticable for her to contact ACAS/issue proceedings within 3 months.

I do not accept that. She gave her evidence in good English. She has had experience of instructing immigration solicitors. She had over 3 weeks after her return from the Philippines to get advice. In the circumstances it was reasonably practicable for her to issue these proceedings within the time limit that would apply had the contract terminated on 4 July 2016. If I am wrong about that then issuing in December 2016 was a further unreasonable delay for the purposes of Sections 11(4) or 23(4) of the Employment Rights Act 1996 or Regulation 7(c) of the Extension of Jurisdiction Order. Had I not found that the dismissal took place in September 2016 I would have found that the claims were not made in time.

Status

36. I shall deal firstly with the question of whether the Claimant worked for the Respondent under a contract of employment.

37. The first issue is whether there is sufficient mutuality of obligations to found any contractual relationship at all. The bare essentials to this work/wage bargain are an obligation to offer and a corresponding obligation to accept some work in return for a payment of wages.

38. I had little difficulty in concluding that there was mutuality of obligations in the present case. The Claimant was offered work on an indefinite basis a fixed weekly wage was agreed. The Respondent argued that the absence of an agreed period of notice meant that the Claimant was not obliged to work as she could leave at any time. I do not accept that argument. Having disregarded the suggestion that the agreement was governed by the written contract on the home office template I am left with no evidence that the parties ever discussed a notice period. Where an indefinite contract for services is silent as to its termination then it will be subject to an implied term that it can be terminated on reasonable notice. This is not a case where the parties had agreed that either could terminate the contract without notice. There was simply do agreement at all. That leaves only the implied term identified above. I find that had the parties given the matter any thought then neither of them would ever have thought that the Claimant could walk out of her care duties at any time of her choosing leaving the Respondent alone in the house. I accordingly conclude that the Claimant was required to give reasonable notice. In those circumstances I consider that there was an agreement that the Respondent would offer and the Claimant would accept work and that the Respondent would pay wages.

39. The next issue is whether there was sufficient control upon which a contract of employment could be founded. The Respondent placed emphasis upon the fact that the Claimant had autonomy in choosing the order in which she carried out her daily tasks. It was further argued that her role in selecting “replacements” meant that she was not under the Respondent’s control. I confess I find the Respondent’s arguments totally unconvincing. In essence the Claimant was a domestic servant. Her duties were dictated by the nature of that position. She knew when she took on the job that she would be required to cook, clean and supply personal services to the Respondent. The fact that she was a knowledgeable carer does not mean that it was not the Respondent who would dictate the scope and detail of the duties. A particular example of that was given in the course of the evidence when it was said that the Respondent would sometimes eat his lunch at various local restaurants and cafes. When he did so the Claimant was required to accompany him. It seems

to me that this is a good example of the Respondent exercising control over what the Claimant did. On a more basic level it was the Respondent who had dictated the rate of pay, the place of work and the sleeping arrangements. I have no hesitation in accepting that there was sufficient control to found a contract of employment.

40. I must then look at all of terms agreed between the parties and ask whether they are consistent with a contract of employment. Of these a key issue is whether there is an obligation to provide services personally. The Respondent categorised the occasions where the Claimant would organise for others to care for the Respondent as amounting to providing a substitute. I consider that this is miscategorising the situation. The reality was that the arrangements put into place were insufficient to give the Claimant the time off that she had agreed and, in the latter stages, insufficient to provide adequate care for the Respondent. When others were asked to assist the Claimant they were paid in addition to and not in substitution for the Claimant. This was not the Claimant sub-contracting her work but simply her organising assistance. I find it inconceivable that the parties would have believed that the Claimant was free to discharge her responsibilities through others. She was a live in servant providing personal care. Nobody would have contemplated an unfettered right to substitute performance. The circumstances would suggest that the Respondent would have retained an unfettered right to reject any carer other than the Claimant. Applying ***Pimlico Plumbers*** I find that the Claimant was obliged to provide personal services.

41. Other terms of the contract included an agreement, later varied, for fixed hours of employment for a fixed wage. The Claimant did not provide any tools or equipment. In the currency of the arrangement she had no scope whatsoever for marketing her services to third parties. I find that these arrangements are consistent with the existence of a contract of employment.

42. The parties had no discussion about tax or national insurance. In some situations, the fact that monies are paid without deduction might point towards self-employment. That would be stronger if invoices are generated. In the present case there was no evidence of any actual agreement about who would bear responsibility for tax. It is quite possible that both parties felt that the other was responsible. It is a possibility that the parties recognised that the payment was made in cash to avoid detection by the authorities. It is unlikely that the Claimant thought this as she had declared the existence of her wages to the Immigration authorities. Overall I consider this matter to be neutral.

43. The Respondent says that there was no agreement for holiday or sick pay or any disciplinary or grievance policies. I accept that there is no evidence that these matters were discussed. However, an absence of discussion is far less compelling than an express agreement that these usual features of a contract of employment would be excluded. I have found that the Claimant expected to be allowed annual leave. In the event that is what she asked for and was permitted to take. I accept an argument made by Mr Hitchens that I should not rely on the conduct of a potentially bad or perhaps ignorant employer refusing to pay holiday pay to support the contention that there was no contract of employment.

44. Other than setting out the duties, living accommodation and wages there was very little express agreement between the parties. However, when I stand back and

look at the whole picture what emerges is that the Claimant was a typical domestic servant working for her "master", the Respondent. Such an arrangement, on a full time basis, is entirely consistent with a contract of employment. I have no hesitation in concluding that the Claimant was an employee falling within sub-section 230(1) of the Employment Rights Act 1996. She would therefore be a worker under Sub-section (3)(a).

45. For completeness I shall consider the alternative position under Sub-section 230(3)(b) of the Employment Rights Act 1996. I repeat my findings above and conclude that despite an occasional requirement to provide cover for herself the Claimant was required to provide her services personally.

46. The next issue is whether the Respondent was "a client or a customer of any profession or business undertaking" carried out by the Claimant. I reject the Respondent's suggestion that this was the case here. The Claimant had been a residential carer before but it is artificial to say that this would provide any material support for a suggestion that she was in business on her own. She had simply had similar jobs in the past. Her duties were so onerous that there was no possibility of her providing services to others in addition to the Respondent.

47. The place of work was the Respondent's home. There was a need for the Claimant to "live in" in order to provide the services she did. The Respondent was the person who fixed the rate of remuneration and dictated the scope of the work.

48. I find that, as an alternative to my finding above, the Claimant was a worker within the meaning of Section 230(3)(b).

Amendment

49. Mr Hitchens sought to amend the claim to rely expressly on the National Minimum Wage Act 1998 and the regulations thereunder. That application was opposed by the Respondent. I noted that the ET1 claimed wages on the basis of "overtime". There was no express reference to the national minimum wage. That said the ET1 did contain an assertion that the Claimant worked for 60 hours per week for the sum of £300. That would be less than the relevant national minimum wage.

50. On 11 October 2016 the solicitors acting for the Claimant referred to the national minimum wage. As such the Respondent was on notice of the issue.

51. The amendment proposed by the Claimant was to rely on the facts set out at paragraphs 5, 7 & 8 of her witness statement prepared for the present hearing. Those paragraphs contained allegations as to the hours worked and an assertion that the pay was less than the National Minimum Wage.

52. The Respondent suggested that there would be real prejudice meeting any claim because of the health of the Respondent. When this was explored it transpired that the Respondent's health had been stable since December 2016. As such, whilst his health would impact upon his ability to defend the claim as brought no additional prejudice was caused by the delay in seeking the amendment.

53. The principles that should be applied to an application to amend are those in ***Selkent Bus Co Ltd v Moore*** **[1996] ICR 836**. In the present case the Tribunal

would have had to have regard to the national minimum wage to deal with the pleaded claim of "overtime" in any event. The expansion of the Claimant's case relates only to adding in some additional hours of work and making express reference to the legislation.

54. I considered whether the Claimant's case was incredible. It is correct to say that the Claimant has at different times given differing accounts of how many hours she worked. That is a matter which the Respondent may seek to rely upon in his cross examination at the full hearing.

55. Simply adding in reference to the national minimum wage act is in my view a relabelling exercise. That lent towards permitting the amendment. It is possible that the 'live in' nature of the Claimant's work makes it harder to identify working hours. There is a clear public interest in employers paying the national minimum wages and in such claims being properly investigated. I do not consider that there was any additional prejudice caused by the delay in clarifying the claim. In the circumstances I gave the Claimant permission to amend her claim.

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed in 1 day. It has been listed at London South Employment Tribunal, 101 London Road West Croydon CR0 2RF to start at 10am or so soon thereafter as possible on 3 July 2017. The parties are to attend by 9.30 am.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant has permission to rely on paragraphs 5, 7 & 8 of her witness undated statement exchanged for the purpose of the preliminary hearing held on 21 February 2017 as if they formed part of her ET1.
2. The Respondent has permission to file and serve any amended response by 21 March 2017.

3. **Disclosure of documents**

   3.1. The parties are ordered to give mutual disclosure of documents relevant to the issues by list and copy documents so as to arrive on or before *4 April 2017.* This includes, from the claimant, documents relevant to all aspects of any remedy sought.

   3.2. Documents relevant to remedy include evidence of all attempts to find alternative employment: for example, a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

3.3. This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

3.4. The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

4. **Statement of remedy/schedule of loss**

4.1. The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before 25 April 2017 a properly itemised statement of the remedy sought (also called a schedule of loss).

4.2. The claimant is ordered to include information relevant to the receipt of any state benefits.

5. **Bundle of documents**

5.1. It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

5.2. To this end, the claimant is ordered to notify the respondent on or before 18 April 2017 of the documents to be included in the bundle at her request. These must be documents to which she intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.

5.3. The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before 25 April 2017

5.4. The respondent is ordered to bring sufficient copies (at least three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

6. **Witness statements**

6.1. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

6.2. The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

6.3. The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

6.4. If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

6.5. It is ordered that witness statements are exchanged so as to arrive on or before *16 May 2017*

7. **Other matters**

7.1. The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.

7.2. The claimant is ordered to prepare a short, neutral chronology for use at the hearing.

7.3. These documents should be agreed if possible.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Crosfill

Dated 20 March 2017

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