zd

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Miss N Golysheva		British Broadcasting Corporation

Heard at: London Central **On**: 27 September 2017

Before: Employment Judge A Issacson

Representations
For the Claimant: Mr B Gil (Counsel)
For the Respondent: Mr N Caiden (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is:

1. **The Claimant is not an employee as defined under section 83(2)(a) of the equality Act 2010 and therefore the Tribunal does not have jurisdiction to hear her claim for a failure to make reasonable adjustments.**

2. **The Claimant's claim for a failure to make reasonable adjustments is dismissed.**

RESERVED REASONS

Issues

1. The issue before the Tribunal at the preliminary hearing was whether the Claimant was an employee as defined under section 83(2)(a) of the Equality Act 2010 ("EqA").

Evidence before the Tribunal

2. The Tribunal was presented with a bundle of documents and written witness statements from the Claimant and from Mr Vicary. The Tribunal also had the benefit of a written skeleton argument by the Respondent's counsel and was handed up copies of the cases of **Bates Van Winkelhof -v- Clyde and Co LLP and another [2014] IRLR 641 ("Bates Van Winkelhof"), Windle and another -v- Secretary of State for Justice [2016] IRLR 628 ("Windle")** and the case of **Pimlico Plumbers Ltd and another -v- Smith [2017] IRLR 323 ("Pimlico Plumbers").** Both counsel gave oral submissions.

Findings of Fact

3. The Claimant started working for the BBC as a Broadcast Journalist on 6 July 2009. She was initially on a six months fixed term employment contract with the Russian World Service which was extended several times until the end of June 2011.

4. On 4 July 2011 she was offered a casual contract within the same division. She then moved to work for BBC News, Business, and in March 2013 she applied to join the casual pool within the BBC World Service, English Language programmes.

5. There was a competitive selection process to join the casual pool within the BBC World Service. Following a formal application process, which included assessment of qualifications and experience, the Claimant was shortlisted for an interview and invited to sit a news test. Upon passing all the tests, she was granted a casual contract to work across World Service's English Language programmes.

6. Before she could start working at the World Service she was required to undertake mandatory training, which included BBC specific software packages for multi-media production, as well as courses on core BBC values, including data protection and safeguarding trust. The courses were required of any journalist working for the BBC on its premises.

7. The Claimant signed a casual contract on 1 April 2013 which offered a daily rate equivalent to a Staff Producer's one day's payment plus holiday entitlement. The rate was exclusive of night pay and bank holiday pay such as Christmas and Boxing Day. The payment was processed on a PAYE basis with deduction of tax and national insurance contributions.

8. At the end of 2013 the BBC undertook a contract overhaul in relation to casual workers, renaming them as "freelancers". For the purpose of the hearing the Claimant was referred to as a "casual worker".

9. It was accepted between the parties that the Claimant's previous contract was replaced by a new "Worker Overreaching Terms & Conditions" (the

Terms") on 29 January 2014. The Claimant continued to be paid on a PAYE basis and her fee was not negotiated individually but remained a flat rate equivalent to a Staff Producer's daily rate plus holiday entitlement.

10. From April 2014 the Claimant was signed up for a pension plan with Nest Pensions and started to contribute 1% of her qualifying earnings in to it. The Claimant was also entitled to statutory sick pay.

11. The Claimant's payslip at page 80 of the bundle demonstrates that the Claimant was paid sick benefit, that she was paid casual pay, including casual holiday pay and that tax and national insurance and net pension contributions were deducted from her pay.

12. The relevant extract from the Terms commences at page 34 of the bundle. Under the heading: "Arrangements for Work" the Terms state:

> *"It is entirely at the BBC's discretion to offer you work and there is no obligation upon the BBC to provide work. In addition, you are under no obligation to accept any work offered by the BBC at any time. The BBC is under no obligation to give any reasons for decisions not to provide work.*
>
> *Once you have been offered work and you have accepted it, a contract is in place between you and the BBC for the time period and/services (as applicable) specified in the booking. Each offer of work shall be*

treated as an entirely separate booking and there shall be no relationship between you and the BBC during the time you are not booked by the BBC.

Nothing in these terms or the terms of any of your bookings shall be deemed to constitute an employment relationship and at no time will an employment contract exist between you and the BBC. These terms and the terms of any of your bookings do not confer any employment rights on you (other than those to which workers are entitled under statute).

In the event that the BBC engages you more than once, this shall not confer any legal rights on you and, in particular, will not establish an entitlement to further or regular work or an intention of creating continuity of employment. Each booking with the BBC which you accept shall be treated as an entirely separate and severable contract. You will not be an employee of the BBC and as such the collective agreements governing employment with the BBC will not apply to you."

13. The Terms go on to state that the worker will be informed of their rate of pay for each separate booking and that they are required to claim payment for the bookings promptly by complying with the BBC's process. This process was explained by the Claimant as an online booking system where the scheduler processed each individual booking. The casual worker would log into their account and accept the offer of shifts and claim them to be paid. The bookings online were often processed weeks after the actual commitment was made by both parties. Once the scheduler offered dates and the casual

worker agreed those dates there was then a firm booking. The entering of the booking into the online system would then enable the casual worker to be paid.

14. The Terms stated that if the worker accepted work but was subsequently unable to work at the time agreed then they must notify their manager booker as soon as possible on the first day of absence. If the worker was receiving pay with deduction of national insurance they may be entitled to claim statutory sick pay. The Claimant was only entitled to statutory sick pay for the days that she had agreed to work.

15. The Terms also stated that the BBC was VAT registered and VAT could be claimed. The hours of work for any booking would vary depending on the operational requirements of the BBC and would be as agreed with the casual worker's booking manager.

16. Under "Availability" the Terms stated:

> *"If you have accepted a booking under these terms and conditions, and you are for any reason unable to provide your services, you must inform the BBC at the earliest opportunity."*

The Terms went on to state under the heading "Substitution":

"With the prior written approval of the BBC and subject to the following proviso, you may appoint a suitably qualified and skilled substitute to perform the services for any booking on your behalf, provided that the BBC accepts the substitute and the substitute shall be required to enter into direct undertakings with the BBC as you have under this arrangement, including with regard to confidentiality. If the BBC accepts the substitute, you will continue to be paid and be responsible for remuneration of the substitute."

17. However, the Tribunal finds that it was not possible for the Claimant to find a substitute unless she was given permission to swap with a fellow casual worker who had also undergone the necessary training and screening through the application process. An email dated 9 June 2014 (page 47F) from David Mazower, the Assistant Editor, confirms that if a casual worker wanted to swap a shift they would have to ask a manager who would then do their best to try and find a replacement for them. It is clear to the Tribunal that the Claimant's level of expertise combined with the amount of training and the requirement of confidentiality meant that the Claimant could not find someone who had been completely outside the BBC to replace her nor did she have the authority to do that despite what was set out in the Terms.

18. The Terms go on to set out entitlement to leave accrued on a pro rata basis for the days that the casual worker worked and confirmed the right to a pension.

19. The Claimant was entitled to apply for internal vacancies like regular staff could do. The Claimant had previously challenged the Respondent when employment contracts were awarded to two casuals on the team instead of opening the vacancies to outside competition.

20. The Terms go on to set out expected behaviour and provide terms regarding confidentiality and intellectual property rights being retained by the BBC.

21. The Claimant's confirmed that although she was regularly working for particular programmes, she accepted that there was no obligation on the BBC to offer her work and no obligation on her to accept work. There had been a number of occasions when the Claimant had not accepted offers of shifts on the programmes she regularly worked on. She also would do work for other parts of the BBC and could, if she wanted to, do work on other channels and networks. For example, at page 55, the Claimant was offered some shifts which she did not want to accept because she said she was not available and at page 57 she accepted one shift out of a number.

22. The Claimant told the Tribunal that although on paper the expectation of casuals was that they worked across a variety of programmes and that there was no obligation to accept any shifts, in reality, most casuals would get attached to a particular programme. Refusing to accept shifts may have adverse consequences, for example, they would not be considered for certain opportunities or become a member of staff. The Claimant gave the example that

in 2014 she was struggling to do a social media shift because it was making her feel unwell. She requested not to be booked on to it again. In May 2014 Mr Mazower told the Claimant that he expected her to do the social media shift and confirmed this in an email stating that *"with social media such an integral part of the World Have Your Say operation, I don't think it's unreasonable to expect anyone who works regularly on WHYS to take on this role".* The Claimant believed that because of her refusal to do a social media shift while she remained on WHYS she was denied opportunities, including being considered for employment and travel.

23. The Tribunal finds that if the Claimant did not make herself readily available for a number of shifts on the programmes she regularly worked on then a possible consequence was that she would not be offered travel or employment opportunities . However the Tribunal does not find that the Claimant was obliged to accept the shifts. The Claimant herself confirmed to the Tribunal that on occasion she would refuse shifts for other work or for other reasons but continued to be offered regular shifts. The Tribunal finds that the possible consequences of refusing a shift were not enough to amount to a mutuality of obligation between the parties between contracts.

24. The Tribunal accepts that some workers like herself were offered regular shifts on certain programmes and that others were more ad hoc. The Claimant occasionally accepted ad hoc work from other programmes or departments.

25. However, once accepting the shift, a worker was required to turn up and leave on time, could not work from home and there was no flexibility. The worker

would work together with the team at the zone allocated to the programme using BBC equipment, studios and software. The worker would take breaks at the time allocated by agreement with the unions, just as staff did. The worker would act like staff for all purposes when on shift and were covered by insurance while in the building. Working a shift the Claimant was under the supervision of the Output Editor at all times.

26. In the Claimant's witness statement at paragraph 21 she said that the BBC's employment policy stated that casual workers working continuously for more than 12 weeks maybe employed on a flexi contract, consistent with the number of shifts they did. When asked about this the Claimant was unable to clarify her point but referred the Tribunal to page 47G which is an extract from the BBC Gateway Radio and refers to freelancers. The document states that BBC Gateway Radio were unable to employ a freelancer for more than 12 weeks on a full-time contract and if there was an ongoing need beyond 12 weeks then there was a need to consider a staff contract. The document goes on to state that there are four different types of freelancers: ones paid under PAYE (like the Claimant), those paid gross, those self-employed and those paid as a service company. The Tribunal finds that this document doesn't create a right to become staff after 12 weeks but requires the BBC Gateway Radio to consider a full-time contract if they require a worker to work continuously for more than 12 weeks. The Claimant didn't demonstrate to the Tribunal that this applied to her.

27. In the last two years the Claimant had worked across a number of programmes but more recently for World Service programmes, News Hour,

News Day, Outside Source, World Have Your Say and Newsroom. The Tribunal accepts the evidence of the Claimant that working regularly on one particular programme meant that she knew the output, the culture and approach of a programme, the technical and editorial aspects of producing for it. A casual worker could be plugged in at short notice without disruption.

28. The Tribunal accepts the evidence of the Claimant that she was expected, when she was not in work, to keep afloat of the programme's development and consistently updating her skills, following the programme's output and day-to-day business so that she could provide continuity of service. However the Tribunal does not accept the Claimant's counsel's argument that this demonstrated that she had a mutuality of obligation between contracts. The Tribunal prefers the argument of the Respondent's counsel that this was just part of the nature of her type of work that she needed to be up-to-date with the news. By keeping up to date with news she could also offer her skills to other programmes and networks.

29. The Claimant was on the News Day's staff and casual's contacts list (page 86 of the bundle) so that if something happened in the news and more staff were urgently needed they could be contacted at home. This shows that the Claimant did work regularly on News Day and was one of the workers who would be called up at short notice. It doesn't demonstrate a mutuality of obligation between the parties.

30. In July and August 2016 most of the Claimant's shifts were for the Newshour programme. In September 2016 the Assistant Manager of Newshour,

Dan Issac, came to talk to her and said that *"if you like working here we shall make it happen*". She was then added to Newshour's mailing list and attended training and team development meetings. In September and November 2016 she worked regular shifts.

31. In the spring of 2017 the Claimant was engaged as a freelancer with BBC London TV Drama when she was asked to translate and adapt a series of stories for developing into a script. She did this from home on weekends and evenings and there were no hard deadlines and she was able to negotiate what she would be paid gross. The Claimant considered this to be a true freelance engagement which could be distinguished from her work on the Newshour programme.

32. The Claimant in correspondence with the Respondent referred to herself as a casual worker and pointed out that meant she was not under any contractual obligation to accept any shift and in return she enjoyed zero job security (page 47C). Similarly at page 65, when being asked to provide a fit note after a period of sick leave, she said that she did not think that a fit note applied to her if she did not have a job. The correspondence also demonstrates that the Claimant has been trying to obtain an employment contract with the Respondent for some time (page 47F(ii)). Counsel for the Respondent argued that this was evidence that the Claimant was not an employee of the Respondent. The Tribunal finds that this is evidence that at the time she believed she was a casual worker and not obliged to provide work or did not expect the Respondent to provide her with work. What she thought at the time is one

relevant factor for the Tribunal to consider in deciding whether the Claimant is an employee but her belief does not necessarily mean that was her contractual status at that time.

33. The Claimant's counsel referred the Tribunal to a number of documents: an email exchange at page 67 of the bundle, an extract from a document in which it had the heading "Disability and Reasonable Adjustments" at page 84 and page 77A of the bundle which is headed "BBC Recruitment Policy" which refers to when recruiting for employees at the BBC, the BBC must show its commitment to provide reasonable adjustments for disabled candidates. The Tribunal does not find that any of these documents demonstrate that the Respondent viewed the Claimant as an employee protected under the EqA. The first email exchange merely demonstrates that the Respondent was reviewing the shifts offered to the Claimant because she had raised a concern about her shifts and the other documents appear to relate to employee recruitment.

Summary of Counsels' submissions

34. Counsel for the Claimant argued before the Tribunal that when considering the Claimant's work status the Tribunal needs to look at the overall picture and not just determine the work status in the gaps between when the Claimant was working for the Respondent. He emphasised that mutuality of obligation was essential in the overall contract. He argued that the Tribunal should not just look at the contract between the parties but should do an

analysis of the reality of the arrangements. He then went on to list 13 factors which indicated what he viewed was a relationship of employment:

1. There was no equality of bargaining between the parties; the Respondent set the terms and rates of pay.

2. Mutuality of obligation – he argued that in reality the Claimant was not free to turn down work as there were consequences for refusing shifts such as reduced shifts and employment opportunities taken away.

3. Integration into the organisation – he argued that the Claimant was fully integrated with the Respondent since she commenced work in 2009 until her illness. For example she was part of the staff contact list and entitled to apply for internal vacancies.

4. Tax - the Claimant was paid under the PAYE system as demonstrated by her payslips. She received sick pay, holiday pay and pension which are all indicative of an employment relationship.

5. Annual leave - the Claimant was entitled to annual leave.

6. Personal service – although the contract of employment suggested that the Claimant could substitute herself in reality it was the

Respondent who needed to be notified and then they would find a replacement.

7. Intellectual property- the Terms provided that all IPR vested in the BBC.

8. Control – the Claimant had given evidence that she did not have control like a true independent contractor would but was required to act in compliance with the Respondent's policies and procedures and had training to conform to the BBC standards. She was required to turn up and leave at set times according to the shift patterns and had to keep up to date with the output of the programme she worked on.

9. Pay – the way the Claimant booked her shifts and was paid on a monthly payslip through an automated system was indicative of an employment contract. The Claimant did not produce her own invoices to be paid.

10. The Claimant was obliged to undertake training and testing to secure a position.

11. The equipment she used was exclusively BBC's own equipment.

12. When sick the Claimant received statutory sick pay for the periods that she was booked to work.

13. The Claimant was enrolled on the BBC's Nest Pension Scheme.

35. Counsel for the Claimant concluded that taking all these factors together the Tribunal must conclude that in reality there was an employee/employer relationship with mutuality of obligation. If the Tribunal finds that looking at the time when she worked that there was an employment status then that employment status should cover whether the Claimant was at work or between jobs.

36. Counsel for the Respondent's primary argument is that the sole claim before the Tribunal is one of alleged failure to make reasonable adjustments as she was not offered more day shifts and late shifts by the Respondent. According, the only claim of discrimination before the Tribunal concerns a period of time at which the Claimant would be described as not working (in the gap between work). This is because her complaint concerns a time before any shift has been offered.

37. The Respondent's counsel argued that prior to an offer of a shift being made there was no contract personally to do work. Until a shift had been offered and accepted, as clear from the Terms, there was no personal obligation on the Claimant to perform work for the Respondent. The relationship during this gap, that is the gap from the last shift undertaken until the next one offered and

accepted by the Claimant, is fatal to the claim. He went on to argue that the relationship between the parties during the period when the Claimant is working is completely irrelevant to the present claim.

38. As an alternative argument in the event that the Tribunal rejected his primary argument counsel for the Respondent argued that if the Tribunal finds that the relationship between the parties when the Claimant is working can be taken into account, then the Claimant is still not an employee as defined by section 83(2)(a) EqA. In addition to a lack of mutuality of obligation between bookings, the terms in the contract itself are inconsistent with being in employment in the wider sense. In practice the Claimant was being offered and declining bookings, the Claimant referred to herself as a freelancer and there being nothing to stop her working for rivals and/or any exclusivity in the relationship.

The Law

39. Counsel for the Respondent set out in some detail the case law in relation to the test to establish if someone who is working is an employee in the wider EqA sense. Counsel for the Claimant confirmed that he agreed the law set out in the Respondent's skeleton argument.

40. In reaching its decision the Tribunal has read the cases presented by the Respondent's counsel and the cases referred to in them and has also looked

at the recently decided case of **Mr Lange and Others -v- Addison Lee Ltd Case Number: 2208029/2016 and Others.**

41. Section 83 of the EqA provides:

> *"(2) Employment" means –*
>
> > *(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;".*

Case law has established that there are three requirements to fall within the definition of an employee under section 83 EqA:

(a) a contract

(b) that requires personal service and

(c) personal service is not being performed by someone in business on their own account for their client/customer.

42. The Tribunal must consider all the evidence and look at the overall picture to conclude whether or not a Claimant falls within the definition of an employee but there can be no substitute for the words of the statute.

43. The Tribunal should first look at the contractual documentation and then look at all the evidence to decide what in fact had been agreed between the parties in reality. An employee contract should impose an obligation on a person to provide work personally and there must be mutuality of obligation between the employer and the employee; some legal obligation towards each other.

44. Looking at the overall position a Tribunal can look at whether one party has the authority over the other in the performance of the work and whether the worker is integrated into the business. Relevant factors include how a worker is paid, whether they provide their own equipment, whether they are subject to disciplinary grievance procedures, whether they are paid sick pay, holiday pay and provided with other benefits such as pension.

45. In **Quashie -v- Stringfellows Restaurant Ltd [2013] IRLR 99 CA ("Quashie")** Elias LJ explained that there were circumstances where a worker worked intermittently for an employer as and when work was available. There was in principle no reason why the worker should not be employed under a contract of employment for each separate engagement, even if of short duration. Where the employee working discreet separate engagements needed to establish a particular period of continuous employment in order to be entitled to certain rights, it will usually be necessary to show that the contract of employment continued between engagements. In order for the contract to remain in force, it is necessary to show that there was at least what has been termed *"an irreducible minimum of obligation*" either expressed or implied, which continued during the breaks in work engagements. Where this occurs these contracts are often referred to as global or umbrella contracts because they are

overarching contracts punctuated by periods of work. Although the fact that there is no umbrella contract does not preclude the worker being employed under a contract of employment when actually carrying out an engagement, it may justify an inference that when he or she does work it is to provide services as an independent contractor rather than as an employee.

46. In **Windle** Underhill LJ stated:

> *"I accept of course that the ultimate question must be the nature of the relationship during the period that the work is being done. But it does not follow that the absence of mutuality of obligation outside that period may not influence, or shed light on, the character of the relationship within it. It seems to me a matter of common sense and common experience that the fact that a person supplying services is only doing so on an assignment – by- assignment basis may tend to indicate a degree of independence, or lack of subordination, in the relationship while at work which is incompatible with employee status even in the extended sense. Of course it will not always do so, nor did the ET so suggest. Its relevance will depend on a particular facts of the case; but to exclude consideration of it in consideration of it in limine runs counter to the repeated message of the authorities that it is necessary to consider all the circumstances."*

47. In **Pimlico Plumbers Ltd** Underhill LJ stated at paragraph 145:

"It is necessary to distinguish two separate circumstances in which the issue of whether a putative employee/worker is engaged on a casual basis might arise. The first is where the substantive claim directly depends on their enjoying employee/worker status in respect of their periods of work (e.g. because the claim concerns their pay or some discriminatory treatment in the workplace). In such a case the question whether the engagement is casual is indeed relevant, but only on the basis that it may shed light on the nature of the relationship while the work in question is being done …But it is not only legal obligations that may shed light of that kind. If the position were that in practice the putative employee/worker was regularly offered and regularly accepted work from the same employer, so that he or she worked pretty well continuously, that might weigh in favour of a conclusion that while working he or she had (at least) worker status, even if the contract clearly (and genuinely) provided that there was no legal obligation either way in between the periods of work. The second situation is where the claim directly depends on the Claimant's status during periods of non-work, either because he or she has to establish continuity of employment or because the claim itself relates to their treatment during that period: in such a case mutuality of legal obligations is essential."

Applying the law to the facts

48. The Claimant's only claim before the Employment Tribunal is whether the Respondent, not offering the Claimant more day and late shifts, meant it failed in

its duty to make reasonable adjustments towards the Claimant. This is a claim of discrimination which concerns a period of time at which the Claimant is not working and therefore falls within the second situation set out in the quote from Underhill LJ in **Pimlico Plumbers Ltd** in paragraph 47 above**.** The Claimant's claim relates to her treatment during periods in the gap when she was not at work. In such a case mutuality of legal obligations is essential. Had the Claimant's claim included discrimination during the periods that she was at work the situation would be different.

49. The Tribunal has looked at the whole picture in deciding whether or not the Claimant is an employee as defined within section 83(2) of the EqA but the question of mutuality of legal obligation during the periods between work is essential.

50. The Tribunal finds, based on the findings of fact above, that although the Terms stated that the Claimant could be substituted, in reality due to the expertise required to carry out the role and the need to know the BBC's policies for the output of the particular programmes and having had to undergo BBC training the Claimant could not bring in her own substitute. In practice the Claimant would notify the Respondent if she was unable to do a job and let them know if she knew of anyone who would swap with her but the actual replacement would be carried out by the Respondent.

51. As set out in the Terms and as accepted by the Claimant she was under no obligation to accept work from the Respondent and did on occasion refuse work. The Respondent was under no obligation to offer her work. In practice

in the last two years before her illness the Claimant had been very regularly accepting work for the Respondent. There were occasions, however, in those two years when she refused work and prior to that period had had gaps when she did not accept work or was not offered work.

52. There does not seem to be any evidence before the Tribunal to persuade it that there was some form of legal obligation between the parties during the periods when the Claimant was not at work. The Tribunal does not accept that the need to keep up to date with the programmes that she worked on amounted to a mutuality of obligation but was something as a professional that the Claimant needed to do to maintain her skills.

53. The Tribunal also finds that the fact that there were some consequences from turning down work such as not being considered for employment contracts or travel is not sufficient to bridge the gap between periods of work. In reaching its decision the Tribunal considered the facts set out in the recent decision of **Laing and Others -v- Addison Lee Ltd** at paragraph 47 which assisted the Tribunal to conclude that there was a necessary undertaking to do some driving work between jobs "*The commercial reality, however, is that they are undertaking to work when and as soon as they log on. There is, in our view, a strong implication of an underlying agreement. They remain under Addison Lee's rules between driving jobs. Their use of the vehicle, for example, is restricted and regulated; and they cannot remove the Addison Lee insignia. The Driver Contract remains in force….the ongoing vehicle hire charge that endures from week to week…and the recoupment of the service charge….all this obliges the drivers to log on and drive, so as to cover fixed hire costs."*.

54. In contrast in this case the only suggestions from the Claimant to demonstrate that there was mutuality of obligation between contracts was her requirement to keep up with the programmes between shifts and the possible consequence of not being offered an employment contract or travel opportunities if she refused shift. In practice she had refused shifts and had continued to be offered work on the various BBC programmes.

55. The Tribunal therefore finds that because mutuality of legal obligation is essential, in light of the Windle case, and since the Claimant has not been able to establish that there was mutuality of legal obligation during the periods when she was not at work, the Claimant is not an employee as defined by section 83(2)(a) of the Equality Act 2010. This decision has been reached even looking at the overall picture.

56. The Tribunal does find that while in work the Claimant was under the control of the Respondent being required to attend within specified hours and comply with the Respondent's policies. She was exclusively using the Respondent's own equipment, the Respondent retained all intellectual property rights and while working she was fully integrated in the organisation. The way she was paid and the fact that she was entitled to sick pay, holiday pay and the benefits of a pension is indicative of employment status. However the crucial missing factor is the mutuality of obligation when the Claimant was not working because her claim relates to the period when she was not in work.

57. In conclusion the Tribunal finds that the Claimant is not an employee and therefore the Tribunal does not have jurisdiction to hear her claim for a failure to make reasonable adjustments. Therefore her claim fails and is dismissed.

_____
Employment Judge Isaacson

_____
Date 19 October 2017