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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs B Shelford

Respondent

Kent Homefinding and Fostering
Ltd t/a Homefinding and
Fostering Agency

and

Held at Ashford on 10 October 2017

Representation

Claimant:

Did not attend

Respondent:

Mr J Casey, Director

Employment Judge Kurrein

JUDGMENT

The Claimant was not engaged under a contract of employment and her claims alleging unfair dismissal and breach of contract in respect of notice pay are dismissed as having no reasonable prospect of success.

REASONS

- 1 The Claimant presented her claim for unfair dismissal and breach of contract on 3 March 2017. On 13 March 2017 the Respondent presented a Respondent in which it took issue with the Claimant's employment status.
- 2 That issue has come before me today. The Claimant hand-delivered a bundle of documents this morning containing a statement in which she stated she would not attend and wished the matter to be dealt with in her absence.
- 3 I have done so in accordance with Rule 47 Employment Tribunal Rules of Procedure 2013.
- 4 I took account of the Claimant's statement and heard the evidence of Mr Casey. I considered the documents before me and made the following findings of fact.
- 5 The Claimant was born on 12 July 1972 and started working for the Respondent, she accepts on a casual part-time basis in 2012.
- 6 The Respondent is a small business with eleven acknowledged employees, and ten people in positions the same as that formerly carried out by the

Claimant. Its primary role is to find foster carers for local authorities who are under a duty to care for vulnerable children.

7 The Claimant was engaged as a Contact Supervisor/Driver, in which role she transported foster children to and from school and to and from visits with their birth family or others. She was paid gross, most recently at a rate of £9.00 per hour. The parties respective expectations were set out in a document headed "Contact Supervisors and Drivers Agreement".

8 She was required to:-

8.1 be enhanced DBS cleared and to undertake appropriate training, both initially and on an ongoing basis;

8.2 dress appropriately and display identification of her as authorised by the Respondent;

8.3 observe interaction between a child and those the child met, make appropriate notes of significant events, write reports and attend as a witness if necessary;

8.4 supervise the child properly at all times;

8.5 to report any child protections issues immediately

9 The Claimant provided her own vehicle for these duties, which was required to meet certain standards, and for which she was paid a mileage allowance.

10 The Claimant was required to attend team meeting and supervision, for which she was paid mileage and £9.00 per hour.

11 She would not be paid anything if an assignment was cancelled before 5;00 pm the previous day, and would only be paid for hours lost if the cancellation was with shorter notice, unless she was already on the journey.

12 The Respondent was under no obligation to provide her with work at all, but did provide her with personal liability insurance cover.

13 The Claimant had no obligation to accept work at all, but was not entitled to substitute anyone else for herself for work she did accept.

14 I accepted the evidence of Mr Lacey, which was supported by extensive documentation, that between January and November 2016, when her engagement terminated:-

14.1 She worked irregular hours as follows:-

January	8.5
February	50.5
March	4.5
April	40.5
May	108.5
June	78.5
July	48

August	74
September	38
October	89.5
November	117

- 14.2 On at least 22 separate occasions she either informed the Respondent she was not available and/or cancelled intended assignments for one or more days.
- 15 In light of all my above findings I am satisfied, on the balance of probabilities, that there was no overarching mutuality of obligation between the Claimant and the Respondent.
- 16 In reality the Claimant was engaged each time she was offered and accepted an individual assignments and it was only at that point, and for the duration of that assignment, that there was any mutuality: the Claimant and Respondent agreed to conform with the expectations set out in the agreement.
- 17 I have therefore concluded that the Claimant was not an employee within S.230 Employment Rights Act 1996 as the agreement lacked the irreducible minimum of an overall mutuality of obligation: Stevedoring & Haulage Services Ltd v Fuller [2001] EWCA Civ 651
- 18 However, I am satisfied that the Claimant was a “worker” within that section on each occasion she undertook an assignment. There was a contract under which she agreed to perform the work personally. That is sufficient.
- 19 In light of my above conclusions the Claimant’s claims are unsustainable and must be struck out.

Employment Judge Kurrein

6 November 2017