

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4102166/17**

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**Held in Glasgow on 21 December 2017**

**Employment Judge: Lucy Wiseman**

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**Ms Marina Campbell**

**Claimant  
In Person**

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**Shorterm Ltd**

**Respondent  
Represented by:  
Mr Robinson Young -  
Counsel**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The judgment of the Tribunal is that the claimant was not an employee of the respondent.

**REASONS**

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1. The claimant presented a claim to the Employment Tribunal asserting she had been unfairly dismissed.

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2. The respondent entered a response resisting the claim on the basis the claimant was not an employee and therefore not entitled to pursue a complaint of unfair dismissal.

3. The Hearing today was a Preliminary Hearing to determine the employment status of the claimant.

**E.T. Z4 (WR)**

4. I heard evidence from the claimant, Ms Sloan and Mr Crouch, Operations Director, Aerospace, for the respondent. I was also referred to a small number of documents. I, on the basis of the evidence before me, made the following material findings of fact.

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**Findings of fact**

5. The claimant commenced work with S.com in 2007. She worked as a contractor with a zero hours contract, and was allocated to the British Airways contract cleaning aircraft at Glasgow airport.
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6. The respondent successfully bid for the British Airways contract and, in 2014, they took over the contract from S.com. The respondent took on the four employees employed by S.com, which included Mr John Hunter, supervisor and Ms Cath Brydson, Resource Business Partner both of whom were based at Glasgow airport.
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7. Mr Hunter gathered all zero hours contractors together on site and informed them of the change. He confirmed the contractors would each have the opportunity to continue working with the respondent, and the claimant took up this opportunity.
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8. The respondent is a recruitment agency specialising in the railway, engineering and aviation sectors.
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9. The claimant agreed to move to a 4 on – 4 off rota carrying out cleaning work in the aircraft cabin. The claimant's line manager was Scott Spence, a BA employee.
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10. The respondent issues a Contractor Job Sheet (PAYE) every three/six months to agency workers. This is issued automatically by email. The claimant did not receive these Contractor Job Sheets: she worked

continuously until the termination of her contract (that is, from 5 May 2014 until 30 June 2017).

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11. The claimant signed on and off each day she attended for work. The claimant carried out the work instructed by her supervisor, using equipment provided by BA. The claimant was paid for the number of hours she worked.
12. The claimant accrued annual leave entitlement and had to seek permission from Ms Cath Brydson to take annual leave.
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13. The claimant was not aware of any appraisals being carried out. She had not ever been disciplined or had her work criticised. The claimant was advised by Mr Crouch that BA had to reduce the number of cabin cleaners, and having considered the appraisals, they had asked for the claimant to be removed from the site.
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**Credibility and notes on the evidence**

14. There were no issues of credibility in this case. The claimant gave her evidence in a straightforward and honest manner. The claimant described herself as a “*contractor*”. The claimant visited the Citizens Advice Bureau following her dismissal and it was there that she had been advised she was an employee and could pursue a claim of unfair dismissal. The claimant had acted on this advice.
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15. There was one dispute between the evidence of the claimant and Mr Crouch regarding the emailing of the Contractor Job Sheet. It was Mr Crouch’s evidence that an automated system issued the Job Sheets every three/six months and that a search of the system confirmed the claimant’s email address was included in the mailing list. The claimant’s position was that she had not received these emailed documents. The claimant was supported in her position by Ms Sloan.
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16. Ms Sloan has a zero hours contract with the respondent. She did receive the Contractor Job Sheets regularly from the respondent. She had assumed the claimant would also have received them, and she checked the claimant's computer by going through all the mail from the respondent. The Contractor Job Sheets had not been received by the claimant.

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17. I preferred the evidence of the claimant and Ms Sloan regarding this matter. I preferred their oral evidence to the evidence of Mr Crouch which, at its highest, was that the email ought to have been sent.

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18. I also found Mr Crouch to be a credible witness although I formed the impression that the systems and documents to which he referred were removed from the reality of what occurred on site. The Contractor Job Sheet is an example of this. Furthermore, Mr Crouch produced a document entitled Contractor PAYE Agreement, but there was no evidence to suggest whether this had been given to the claimant.

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19. The Contractor PAYE Agreement included a clause giving the respondent the right to terminate the Agreement. It also included a clause that following completion of an assignment, the contractor (the claimant) had no further obligation to carry out work for the client or for the respondent, and the respondent had no obligation to find or offer work to the claimant.

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### **Submissions**

20. Mr Robinson Young submitted the claimant was an agency worker and not an employee. She contracted with the agency and undertook work for a third party. There was no employment contract between the claimant and the respondent and no statement of terms and conditions of employment had been issued.

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21. The claimant carried out individual assignments and Mr Robinson Young invited the Tribunal to accept the Contractor Job Sheets had been issued by the respondent, as confirmed by Mr Crouch in his evidence.

22. It was submitted there was no mutuality of obligation. The Contractor PAYE Agreement contained a termination clause. The respondent did not exercise control over the claimant's day to day activities, and they did not provide  
5 equipment for the claimant to undertake her duties. The claimant had worked on a site owned and operated by BA.

23. Mr Robinson Young invited the Tribunal to find the claimant was not an employee and to dismiss the claim.

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### **Claimant's submissions**

24. Ms Campbell submitted the only reason she had brought the claim was because of the advice received from the CAB. Ms Campbell stated she had  
15 not received emailed Contractor Job Sheets.

### **Decision and Discussion**

25. I had regard firstly to Section 94 Employment Rights Act which provides that  
20 an employee has the right not to be unfairly dismissed by his employer. The claimant, in order to proceed with a complaint of unfair dismissal, must show that she was an employee of Shorterm Ltd.

26. The term "*employee*" is defined in Section 230 Employment Rights Act as  
25 "*an individual who has entered into or works/worked under a contract of employment*". A contract of employment is defined as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

30 27. There are four essential elements which must be present for a contract of employment to exist. There must be:-

- a contract between the worker and the alleged employer;

- an obligation on the worker to provide work personally;
- mutuality of obligation and
- an element of control over the work by the employer.

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28. The respondent relied on a document entitled Contractor PAYE Agreement as being the contract between the parties. There was, however, no evidence to suggest this document had been given or sent to the claimant. I noted that in the statement produced by Mr Crouch, he used the term “*contract*” interchangeably to describe the Contractor PAYE Agreement and the Contractor Job Sheet. I was not satisfied the Contractor PAYE Agreement had been given to the claimant.

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29. I acknowledged Mr Crouch’s evidence that the Contractor Job Sheet should be sent to each worker every three/six months. I preferred the claimant’s evidence regarding this matter and I found she had not received Contractor Job Sheets from the respondent.

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30. I concluded there was no written contract between the claimant and the respondent. The claimant commenced work with the respondent on 5 May 2014 and worked continuously (except for holidays) until 30 June 2017. Mr Crouch, in response to a question from his representative, referred to there not having been any significant breaks between assignments. I noted, however, that there was no evidence of any breaks between assignments, and I was satisfied the claimant had worked on a continuous basis. In fact, the claimant had perfect attendance for work.

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31. The second factor to be considered is the obligation to provide work personally. There was no evidence regarding this matter.

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32. The third factor to be considered is mutuality of obligation. This relates to the obligation on the employee to carry out work which is offered and the obligation on the employer to offer work. The claimant was asked in cross examination whether she believed there was an obligation on the respondent to offer work, but the claimant was not able to answer this question in circumstances where she was on a 4 on – 4 off shift which continued until she was told otherwise. I, however, accepted Mr Crouch`s evidence to the effect there was no obligation on the respondent to seek, or offer, work to the claimant following the termination of her placement/assignment.
33. The fourth factor to be considered is the issue of control. The evidence regarding this matter was clear. The claimant was supervised by a BA employee. The claimant was provided by BA with the equipment to carry out the cleaning, and her work was allocated and supervised by BA. There was evidence to suggest BA monitored and appraised the claimant`s work, although this was not known to the claimant.
34. I acknowledged the claimant had to seek permission from the respondent`s employee on site, regarding taking annual leave, but I did not consider this material.
35. I next had regard to the surrounding circumstances of the case. I noted the claimant`s evidence that she considered herself to be a “*contractor*”. I considered this indicated the claimant understood the basis upon which she carried out work for the respondent. I further noted the claimant accrued and took holidays.
36. I decided, on balance and having had regard to the above factors, that the claimant was not an employee of the respondent. There was no contract of employment or statement of employment particulars. The claimant was offered work by a recruitment agency (the respondent) which was to be carried out for a third party. The respondent had no control over the work

carried out by the claimant for the third party, and the respondent had no obligation to find or offer work to the claimant following upon the termination of the assignment. .

5 37. I acknowledged, in reaching this decision, that the claimant had received advice from the CAB to the effect she was an employee. However, I was satisfied that I had had the benefit of hearing from both parties and being referred to documents prior to making my decision.

10 38. I decided the claimant was not an employee of the respondent. The claimant cannot proceed with her claim of unfair dismissal.

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20 **Employment Judge: Lucy Wiseman**  
**Date of Judgment: 04 January 2018**  
**Entered in register: 05 January 2018**  
**and copied to parties**

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