



EMPLOYMENT TRIBUNALS

Claimant: Father Kosmas Pavlidis

Respondent: The Trustees of the Greek Orthodox Community in
Birmingham

Heard at: Birmingham

On: 17 & 18 April 2019

Before: Employment Judge Dean

Representation

Claimant: Mr F. Jaffier, Advocate

Respondent: Mr J. Crosfill, Counsel

JUDGMENT

1. The claimant was not an employee of the respondent within the meaning of s83 of the Equality Act 2010
2. The claimant was not an employee of the respondent within the meaning of s 230 Employment Rights Act 1996.
3. The claimant was not a worker of the respondent.
4. The tribunal does not have jurisdiction to entertain the claimant's complaints against the respondent.
5. The claimant's complaints are dismissed

REASONS

The Issues

1. The Preliminary Hearing is to consider the sole issue of the claimant's status and whether or not the Claimant's relationship with the Respondent was that of an employee or whether the Claimant is a worker or an officeholder.

Background

2. By way of background in this case, the Claimant is a Greek Orthodox Priest of the Church of Greece. Whilst remaining an employer of the Church of Greece, the Claimant was seconded in June 2008 to the Archdiocese of the Thyateira & Great Britain ("The Archdiocese") where he continued to be the Head Priest at the Parish of the Holy Church of the Dormitions of the Theotokos-St. Andreas within the City of Birmingham. The Claimant's secondment was brought to an end with effect 31 October 2017 when the Claimant returned to his home church in Greece where he was assigned to a Greek parish. The Claimant presented a complaint to the Employment Tribunal on the 21 February 2018 asserting that the circumstances by which his assignment was brought to an end was an unfair dismissal and unlawful discrimination because of a protected characteristic of his race and that he was entitled to a redundancy payment and holiday pay and other payments. The Claimant's complaints are extensive and they are brought against the Trustees of the Greek Orthodox Community of Birmingham who he asserts were his employer.
3. The issues to be determined at this Preliminary Hearing are limited to whether or not the Claimant was an employee of the Respondent or a worker or an officeholder.

The Law

4. The statutory provisions to which I am directed, are those contained in the Employment Rights Act 1996 and in particular the definition of an employee at Section 203(1) which defines an employee as:

s230 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.

5. The statutory definition of Worker is contained at Section 230(3) Employment Rights Act 1996 which defines a worker as: -

(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.

6. In each case an employer is defined as:

(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.

7. I remind myself that the issue to be determined by me at this hearing is whether or not the claimant enjoyed the status as an employee of the respondent.

8. Under the provisions of Section 230 of the Employment Rights Act 1996 an employee is defined as an individual who has entered into or works under “a contract of employment”. I am reminded of the law in Autoclenz Ltd -v- Belcher & Others [2010] IRLR 70 CA. In particular at paragraphs 87-89:

“Express contracts (as opposed to those implied to the conduct) can be oral, in writing or a mixture of both. When terms are put in writing by the party and it is not alleged that there are no additional oral terms to it, then those terms will, at least prima facie represent the whole of the party’s agreement. Ordinarily the parties are bound by those terms where a party has signed the contract....

Once it is established that the written terms of the contract were agreed, it is not possible to imply terms into a contract that are inconsistent with its expressed term. The only way it can be argued that a contract contains a term which is inconsistent with one of those

express terms is to allege that the written terms do not accurately reflect the true agreement of the parties.

Generally, if a party to a contract claims that a written term does not accurately reflect what was agreed between the parties the allegation is that there is a continuing common intention to agree another term, which intentionally was outwardly manifested but, because of a mistake (usually a common mistake of the parties) but it can be a unilateral one) the contract inaccurately recorded what was agreed. If such a case is made, a court may grant rectification of a contract.”

9. 55I refer to the learned judgments of the Court of Appeal in Autoclenz -v- Belcher, and in particular to Aikens LJ’s reference to the guidance in Lady Justice Smith comments at paragraph 52 of the judgment:

“The Court or Tribunal must consider whether or not the words of the written contract represent the true intentions or expectations of the parties (and therefore their implied agreement or contractual obligations) not only at the inception of the contract but at any later stage where the evidence shows that the parties have expressly or impliedly varied the agreement between them.”

Lady Justice Smith continues at paragraph 69:

“However it seems to me that, even where the arrangement has been allowed to continue for many years with question on either side, once the Courts are asked to determine the question of status, they must do so on the basis of the true legal position, regardless of what the parties have been content to accept over the years.”

The Court of Appeal in Autoclenz Ltd -v- Belcher [2011] UKSC and in Coalwork was preferred and Lord Clerk giving the lead judgment in the House of Lords confirmed:

“The question in every case is, as Aikens LJ put it at paragraph 88 quoted above, what is the true agreement between the parties.”

10. The parties have referred me to extensive authorities to which I have had regard in determining whether the claimant was an employee of the respondent and if not whether he is a worker or an office holder. In considering whether a minister of religion is an employee, or worker or merely an office holder I have had regard to a number of authorities to which I have been referred by the parties, in particular:

Sharpe v The Bishop of Worcester [\[2015\] EWCA Civ 399](#)

Percy v Church of Scotland Board of National Mission [\[2005\] UKHL 73](#)

New Testament Church of God v Stewart [\[2007\] EWCA Civ 1004](#)

President of the Methodist Conference v Preston [\[2013\] UKSC 29](#)

Gilham v Ministry of Justice [\[2018\] IRLR 315](#)

The Evidence

11. In hearing the evidence presented by the parties, the Tribunal has been assisted by the tribunal appointed interpreter Miss V. Betsou who has provided interpretation for the Claimant and for the Respondent's witnesses, His Eminence Archbishop Grigorios Theocharous (“the Archbishop Grigorios”) and for Fr. Pavlos Koundouris (“Fr. Pavlos”). I have been referred to witness statements for each of the witnesses whose witness statements have been taken as read and have been referred to a bundle of documents extending over some 282 pages.

12. The submissions were heard on the 17 and 18 April 2019 and my decision has been reserved.

Findings of Fact

13. At the start of the Hearing, Mr Jaffier on behalf of the Claimant made a number of applications. During the adjournment, the parties' representatives had opportunity to take instructions from their clients and

Mr Jaffier upon his return confirmed that the Claimant did not wish to pursue his original applications. The parties' confirmed that such of the documents within the agreed bundle that required translation into English had been translated and that the Preliminary Hearing would proceed.

14. The undisputed facts are that the Claimant was born on the 3 November 1962 and grew up in Drama, Macedonia and Thrace in Greece and in his adult-life trained for the priesthood and in 1997 he was ordained as a priest in a Greek Orthodox Church. It is common ground and acknowledged by the Claimant and by the Respondents' witnesses that in an effort to resolve the lack of Greek Orthodox Priests around the world, that is, the Church outside the territorial, administrative and ecclesiastical authority of the Church in Greece, the Church beyond Greece rely mainly on the Church in Greece (the Archdiocese of Athens and all Greece) and the Church of Cyprus to form new entrants to the Priesthood. If individual Priests wish to do so, they can with the permission of the Greek Church, to serve the Greek Orthodox Church abroad within the diaspora.

15. In Greece, all Greek Orthodox Priests are Civil Servants and fall under the Civil Servant Employment Law. Once a Priest has become ordained, whilst serving as a Priest under the auspices of the Greek Church, he is paid by the Greek State, his salary, his sick pay, his holiday pay and pension and while an employee of the State he remains under the administration and authority of the Greek Church. As long as the Priest whilst seconded to parishes within the diaspora with the authority of the Greek Church, he continues to remain an employee of the Greek State and enjoys all the rights and benefits of that employment, including for the avoidance of doubt his salary and other benefits that are paid to him in Greece. Throughout the period of time, whilst the Claimant has been a Priest in Birmingham, he has continued to receive payment of his salary into his Greek bank account and he has continued to accrue a pension and other benefits with his employer the Greek State.

16. I have heard evidence from Fr. Pavlos and from Archbishop Grigorios as well as from the Claimant about the arrangements made, by which priests ordained in the Greek Church are seconded to perform their ministry in

parishes across the diaspora. Fr. Pavlos had been the priest previously seconded to minister in the Respondent community as Parish Priest from June 1997 until 25 June 2008. Having had full regard to the evidence presented by all three witnesses for the respondent and the claimant also I am led to the conclusion that priests from the Church of Greece who want to be seconded to a Parish within the Church of Greece in Great Britain, apply first to their Home Bishop to whom they report, the Bishop of the Metropolis in Greece who then sends a letter with the priest's details to the Holy Synod with his consent to the proposed secondment and his recommendation together with the consent of the Bishop to whom the Priest wishes to be seconded. The Holy Synod of the Church of Greece then decides whether or not to approve the secondment.

17. The secondment is valid for up to two years and may then be extended. Requests for an extension of a secondment, are sent via the receiving Bishop who refers a request to the Bishop of the Metropolis in Greece. The Bishop of the Metropolis in Greece to whom the Priest reports decides whether to approve or refuse the secondment. If the Home Bishop requires the priest to return to serve him, again in the Holy Metropolis in Greece, an extension is not agreed, then the priest has to return to his Metropolis in Greece. In the event of an extension of the secondment is agreed, the priest's details are sent to the Holy Synod of the Church of Greece together with consents to authorise the extension of the secondment. The claimant does not disagree with the mechanism for secondment to the diaspora as described by the respondent's witnesses.

18. I have been referred to extracts of documents that are described as the Regulations Number 305/2018 as regards Priests and Deacons published in the official government newspaper which the Respondents assert set out, amongst other things, the duties of priests in relation to the spiritual and worshipping life of the congregation (Articles 2 and 8) how priests that are appointed in Greece to their office if there is a vacancy (Article 4), the criteria that need to be fulfilled in order to apply for the Office of priests (Article 8); evaluation of priests (Article 11); salary and other rights; transfers of priests (Article 12); secondment of priests (Article 13), retirement (Article 14); dismissal in the event if a seconded priest does not return to his Home

Metropolis after a secondment period comes to an end (Article 15); releasing priests to serve another Metropolis (Article 16) Ordination of priests (Article 17). A copy of the (Articles 13) in relation to secondment of priests and (15) suspension of Vicars has been translated as an exhibit to Father Pavlos's witness statement PK1 witness : -

“Article 13 Secondment of Regular Vicars. *The secondment of a Regular Vicar to another vacant establishment post cannot be extended beyond three months, continuously or intermittent within the same year, unless the secondment takes place upon his request or with his consent (Article 37 para 4 of the law 590/1977).”*

“Article 15 Suspension of Vicars. *A vicar, except for the retirement cases provided in the previous article, is suspended from his post:*

- (a) *Due to penalty pursuant to the law on Church Courts.*
- (b) *If he acts against his official obligations, for example if he abandons his post without permission for more than 30 days without an excuse, or if he does not comply with a legally made secondment. In such cases, the previous summons of the Vicar to apologise or give explanations constitutes a substantial type of the relevant Deed of the Metropolitan.*
- (c) *If a Vicar is a teacher to exercises his church duties and he is transferred to another educational region and as a result he cannot exercise his church duties.”*

19. I have been referred to the Constitution of the Church of Greece, I have been provided with a copy of Article 60 [witness bundle p71] which provides:

“Article 60

1. *The secondment of Priests and Deacons of the Church of Greece is permitted for a period of up to two years to Orthodox Holy Churches abroad and to Orthodox Missionary areas of Orthodox Churches, with full pay. The aforementioned secondment is carried out through the Holy Synod of the Church of Greece, having received an application from the Priest who desires such secondment and with*

the consent and suggestion of the higher arc to him the Priest organically belongs and of the Hierarch of the Metropolitan area to which the Priest desires to be seconded to.

2. *With using the same procedure, a secondment of priests and deacons belong to the Church of Greece, is permitted with full pay, to the Holy Monasteries of Mount Athos, The Holy Brotherhood of Jerusalem and Mount Sinai.*
3. *The period of secondment is possible to be renewed each time, using the same process as above.”*

20. Archbishop Grigorios has given an unchallenged account that at present, there are some 20 Priests seconded from the Church in Greece to the Archdiocese. The Archbishop is responsible for the Greek Orthodox Church in Great Britain and Ireland. The Greek Orthodox communities in Britain are organised either by way of trust deed or they are set up by way of constitution. The Respondent is set up by way of trust deed. The Trustees of the Greek Orthodox Community in Britain are responsible for the financial and administrative matters in the operation of the parish.

21. On the 5 June 2008, following a visit to England, and a meeting at the offices of the Archdiocese of Thyateira and Great Britain, the Claimant was appointed as Priest and Head of the Holy Church of the Dormition of Theotokos - St Andreas of the City of Birmingham. His ministry was to begin in June 2008. The Claimant was invited to inform the Archdiocese of the exact date of his arrival in England, to make appropriate arrangements with the ecclesiastical committee of the community at which he was to administer, and at which he was to “*minister with the help of God*”. The letter [65] confirmed:

“We congratulate you on your appointment and wish that you will serve the sacred community of the Dormition of Theotokos-St Andreas of the City of Birmingham with zeal and fear of God, which was entrusted to you by the biblical province of the ecumenical thrill of Constantinople”. [65]

22. The Claimant's confirmation of his posting was confirmed by the Holy Synod of the Church of Greece on 23 October 2008 [67] under the then current article 80 Law 590/1987 "*concerning the constitution of the Church of Greece*".
23. Like Fr. Pavlos before him, the Claimant was provided with accommodation in Birmingham by the community.
24. Both the Claimant and Fr. Pavlos have confirmed that in addition to being provided with accommodation for himself, the priest and his family, the community provided the priest with the use of a car and a stipend or supplementary income of £700.00 per month. The full salary of a priest as a public servant continued to be paid by their employer, the State of Greece in Greece and the Claimant has confirmed that his approximate salary in Greece is Euro 1200, in addition to his pension and other benefits.
25. The Claimant has confirmed in his evidence that the payment of monies from the Greek Government was at a standard sum determined by the Church in Greece and that his Home Bishop informs the Government of the sums that he is due to be paid. The provision of accommodation for the priest by the community he serves is a practice adopted in Greece as well as in the UK. The Claimant confirmed that his current parish, since his return to Greece, is located less than 30 minutes from his family home and he lives in the family home rather than in accommodation within the Church community. The Claimant, like Fr. Pavlos before him, was provided with the use of accommodation owned by the community in which he and his family lived whilst serving the church in Birmingham. The accommodation was provided free of rent and, in addition, the Claimant was provided with a car for his use that had been used by the previous priest.
26. The Claimant has confirmed to me and set out in his witness statement, paragraph 3.3 that all priests of the Greek Orthodox Church are employed as Civil Servants in Greece, are paid by the Greek State, although they remain under the administration and authority of the Church in Greece. The Claimant has confirmed that when deployed to serve with the Greek Orthodox Church in the diaspora, Greek Orthodox priests continue to be

treated as Civil Servants in Greece and continue to be paid their state salary and other benefits. The Claimant, like his predecessor Fr. Pavlos and all other Greek Orthodox Priests who serve within communities in the diaspora, continued to serve within the diaspora at the direction of the Church in Greece and in the same way that the Claimant's secondment arrangements were extended biannually. It was the Metropolitan of Polyanis and Kilkisiou Emanuel that wrote to the Claimant on the 30 May 2014 [69] informing him that: -

“The Sacred Metropolis has a lot of needs due to the shortage of priests. This situation is further burdened by the inability to appoint priests, in accordance with the directions of the state, from the priests who are ill and from priests who are seconded. The renewal of your secondment has been decided after much forbearing and I wanted you to know that this is the last time your secondment is renewed. Please plan your family affairs because the needs of the Metropolis will not permit me to provide you with a new renewal. If despite all these you wish to remain in another Metropolis after the next two years, we will gladly provide you with a Canonical Certificate of Discharge to assist you.”

27. That correspondence was copied for information to Archbishop Grigorios and a letter was sent from Archbishop Grigorios to the Claimant on the 1 July 2014 [71]. As a response to the letter that was sent to the Claimant, the Committee of the Respondent wrote to Archbishop Grigorios [74A – 74B] acknowledging that the Claimant's placement at the Respondent Church Community in Birmingham was at the gift of the Archbishop and the Metropolis in Greece asked that the Claimant be allowed to serve for a further two years in the Birmingham Community, they wrote: -

“Your Eminence, the Church Council, the Philoptochos Society and the whole community with one accord, please I strongly urge you to act directly with all the love that constantly surrounds you and to renew the term of our respected Father Cosmos so that he can serve for another two years in our community, having already been seconded for two years from the Metropolis where he belongs.”

28. This secondment was renewed and, whether by an oversight or design, on the 8 August 2017 the Bishop of Polyanis & Kilkisiou on behalf of the Holy Metropolis wrote to Archbishop Grigorios on the 8 July 2017 [77] informing Archbishop Grigorios that the Claimant's secondment period had expired on the 12 June 2016 and asked for a clarification whether the Archbishop wished to renew the Claimant's secondment. On the 6 September 2017, the Metropolitan Polyanis & Kilkisiou wrote to Archbishop Grigorios again [83] informing him that, having been unable to make contact with the Claimant and in the absence of contact, they would be obliged to proceed under the relevant procedures defined by the provisions and regulations of the Church of Greece and that his payroll would be terminated. Archbishop Grigorios wrote to the Claimant on the 15 September 2017 [92] which identified the Claimant's failure to honour his obligations as to the Greek Law requiring him to obtain consents to be permitted to temporarily serve the Church in the Holy Archdiocese of Thyateira and Great Britain.

29. In the event, the Claimant notified the community in Birmingham that he was returning to Greece. Having made no contact with Archbishop Grigorios, who was informed that the Claimant had made arrangements to return to Greece, Archbishop Grigorios wrote to the Claimant on the 9 October 2017 [96].

30. The account that has been evidenced in writing by which the Claimant's secondment to act as a Head Priest at the Community in Birmingham and confirms the arrangements that the Claimant, as he himself has confirmed, is that the claimant remained a clergyman of the Holy Church of Greece and a civil servant of the Ministry of Education and Religious Affairs throughout his secondment by Archbishop Grigorios to the community in Birmingham. I have been referred to no other written documentation to record the terms of the claimant's assignment on secondment other than the documents to which I have referred above. I find that the express terms of the secondment and assignment arrangements were as confirmed in writing by the Ecumenical Patriarchate of Constantinople, Archbishop of Thyateria and Great Britain and the Holy Synod of the Church of Greece to the claimant. Mr Jaffier has suggested in his closing submissions that the relationship

changed in 2014, however there has been no evidence led to substantiate that assertion other than that the claimant was informed by his home church in Greece that his secondment would not be authorised beyond 2016. When the secondment was renewed in May 2014 the Metropolitan of Polyanis and Kilkisiou Emanuel wrote to the Claimant on the 30 May 2014 [69] to advise him that it was to be the last time that his secondment would be renewed there is no evidence before me that the substance of the secondment changed at that time.

31. During the Claimant's period as priest at the Respondent community, he was paid a stipend to supplement his Greek income that ranged between £650 and subsequently increased to £700 per month. The Claimant in his witness statement identifies that he understood that the Birmingham Greek Orthodox Community and Church Committee was his employer however other than the broad assertion that he makes the claimant has not referred me to any evidence that, other than his being assigned to them under the terms of the secondment arrangement from the Ecumenical Patriarchate of Constantinople that were as described above, any express contractual terms were agreed by him with the respondent.

32. Both parties agree that the role of a priest in a Greek Orthodox community is to provide spiritual and pastoral care in addition to conducting Church services, the timing of which services on Sundays, Vespers and Holy Days were agreed between the priests and the parish. The timing of the services were agreed to be at times most convenient to the community which was served, I have been referred to the example that dawn services are frequently held in Greece compared to a later morning service within different parishes within the diaspora and, but for the extent that the needs of the community guided the convenience of the precise timings of the services and when they are held, the way in which the service was delivered was at the discretion of the priest. As Head Priest the claimant determined who would be the priest who would conduct the services.

33. I have been referred to the Articles of Association where the Holy Churches and Communities of the Greek Archdiocese of the Thyateira and Great Britain, West Europe, Ireland and Meliti. I have been referred in particular

the Fourth Article identifying the basis upon which the Head Priest of the Communities within the diaspora are appointed by the Archbishop in agreement with the Board of Directors of the Community. Article 4 has been translated [248-249], in particular those duties include: -

- a. *“2. Strictly comply with the provisions of the Statute and the Holy Rules.*
- *If he does not belong to the Holy Archdiocese of Thyateira and Great Britain, he must have legal leave.*
 - *To perform the Divine Service and the Sacraments in accordance with the Statutory Provisions of the Ecumenical Patriarchate.*
 - *To preach the Word of God.*
 - *To manage Sunday School.*
 - *To teach, if there is time, at the Greek School.*
 - *To arrange the ministry of the Liturgical Services.*
 - *To supervise the cleanliness and decency of the Church.*
 - *To guard the sacred vessels of the Church and attend to their good preservation.*
 - *To carry out the duties of a Registrar entering marriages, baptisms and funerals in the book thereof and issuing the necessary certificates, which will be validated by the Archdiocese.*
 - *To correspond with the Archdiocese for all intellectual matters and sign all documents issued by the Office of the Community with the President of the Secretary thereof.”*

The Fourth Article continues to identify that:

“3. The Head Priest, due to his title, represents the Archbishop before the Community and the Council; he participates in the proceedings of the Council without vote, but his opinions would be entered on the minutes.”

The Fourth Article provides that:

“ The Head Priest when performing his duties shall cooperate with the Council and contribute to the financial progress of the Community, preaching from the pulpit and circulars, to fulfil his financial obligations to the Community. He organises fundraisings,

records all Christians in a book in order to have a list for sending letters and announcements to the Community.”

Paragraph 6 provides that:

“6. The Head Priest and other priests cannot be absent from the community without the prior agreement of the Council and the written consent of the Archdiocese.

- When transferred, he hands over, by protocol, the Holy Vessels and the registry of books of the Community to his successor, and sends a copy to the Archdiocese.*
- The Head Priest and other priests are entitled to a 30-day leave with full remuneration, as a holiday, upon agreement with the Board of Directors of the Community and the written permission from the Archdiocese.”*

“7. Any dispute between the Board of Directors and the Head Priest shall be referred to the Archdiocese.”

34. The Claimant has acknowledged that each year during his secondment to the Archdiocese he took a month-long leave of absence to return to Greece with his family and each month he was in receipt of his monthly stipend. The Claimant has confirmed that on occasions, albeit rarely, he enjoyed travelling outside of the parish and on four occasions visited Snowdonia.

35. The Claimant has given an account that at all other times, 24 hours a day, 365 days of the year, other than when he was sleeping, he was at work for the Respondent. I have heard from Fr. Pavlos that whilst he was the priest at the Respondent community, he provided the spiritual and parochial care to the congregation and that priests are, from time-to-time contacted by members of the congregation to say prayers at their home or to bless their home, or to attend the cemetery to say prayers for the departed at convenient times that were agreed by him. In respect of those priestly duties, parishioners and members of the congregation would from time to time make a payment by way of a gift to the priest. I find that the Claimant, like his predecessor was provided with a mobile phone, by which he could be contacted by parishioners who would then make arrangements for the

priest to visit them by way of appointment or in necessary circumstances to urgently attend upon the parishioners. From time to time, the Claimant as was his predecessor, might be required to remain at the home provided for him and his family by the community or to attend the church premises in the event that repairs or maintenance were needed to be made either to the house or the church. Likewise, in his care of the fabric of the Church and the requirement to supervise the cleanliness and decency of the Church the claimant was required to attend the premises to oversee the maintenance of its fabric and to switch on or off the heating. In addition, the Claimant used the computer to prepare a newsletter to circulate to the community as part of his ministry.

36. The Claimant asserts that he was employed directly by the community and that he was required by them to be at work all hours of the day and night except when he was asleep. The Claimant has claimed in evidence to me that he was at work in all of his waking hours, even when he went shopping with his family or enjoying family time as he may be contacted by his mobile telephone at all hours.
37. I find that the mere fact that he may be contacted by telephone by members of the Respondent congregation did not impose upon the claimant a duty to immediately answer the telephone or to necessarily immediately respond to requests from the community other than to the extent that he was called urgently to minister to the sick or to their families in satisfaction of his priestly duties. I find that the account that the claimant gives that he was working all of his waking hours is one coloured by his retrospective view of the relationship that he had with the respondent. I find that although the claimant was, as a priest serving the community, available to be called to undertake his priestly obligations he was not working for all of the hours when he may have been contacted.
38. I have been referred to two sets of minutes of extraordinary meetings of the committee of the Respondent's Church, minutes held on the 30 January 2017 [278] and on the 8 May 2017 [281-282], the minutes of the meeting held on the 30 January 2017 identify the objective as being "To discuss and acknowledge how we can improve the overall function of our Church and

our community.” The Claimant has referred to paragraph 6 and 7 of the minutes where the following observations are made: -

6. *“When there are sick people, the Priest must visit them. An opportunity to call another Priest should not be given.”*

7. *“The Priest must answer his phone more regularly, it may be something urgent. The opportunity to call another Priest should not be given.”*

39. I find that the observations made are not directions as to how and when the Priest must visit the sick of the community but rather that he should fulfil his priestly duty to do so. Likewise the direction that the Priest must answer his phone more regularly does not, I find, direct the Claimant’s performance of his priestly duties in such a way that the Respondent Committee is his master, his employer and the Claimant as the Priest a servant, other than in the biblical sense.

40. I have heard evidence from Mr Lenis Malla the Respondent Administrator and former member of the Church of Committee. Mr Malla confirms that the Claimant was paid the stipend of £700 per month to supplement his salary as a Priest of the Greek Orthodox Church. Mr Malla suggests having had regard to the order of services identified in the leaflets prepared by the Claimant that during the period of the year his average hours, where he was actively engaged in his duties as a Priest were on average 12 hours per week. Mr Malla may have been overly conservative in the number of hours during which he suggests that the Claimant performed services either routinely or the conduct of christenings, funerals and weddings in addition to the time taken when he was preparing circulars and taking calls from parishioners and others. What is clear, is that the hours when the claimant actively undertook the duties as Head Priest of the Community extended beyond those of being the celebrant at Liturgical Services. The claimant also was available to be contacted by mobile telephone by the members of the community who needed his help. In supporting the Community of his own initiative the claimant created a website on which he chose to publish his mobile telephone number for people to contact him on. The claimant has

confirmed that he did these tasks without being asked by the respondent to do so, and he observed that he had made a mistake in doing so. While the claimant was conscientious in the way in which he served the community it was not at the direction or in the control of the respondent.

41. From time to time, in the winter, the claimant went to the church building to switch the heating on sometimes as early as 05:00 and then he would return to his home that was five minutes from the church (traffic depending). It is evident from the claimant's own evidence that this was only an occasional task that he undertook.

42. The claimant's assertion that he performed his duties as Head Priest such that he was working all of his waking hours, I do not find to be an accurate reflection of the reality of his day. The Claimant has suggested that he was working for 18 hours a day for 335 days of the year, that is not what I find to have been the reality. In addition to his performance of his priestly duties in conducting services the claimant was available to be contacted by members of the community and when, as Head Priest of the community, he was contacted by members of his community he made arrangements to meet with members of the community or to attend meetings with the Committee. In essence all that the claimant did when working as a priest in the respondent's community was to fulfil the terms of the appointment he held as the Head Priest of the community to which he was appointed by his Archbishop as detailed in the Articles of Association of the Holy Churches and Communities of the Greek Archdiocese of Thytateria & Great Britain, West Europe, Ireland and Meliti [248].

43. The appellant's account to me that he was 'stranded' in his house and could not go anywhere but had to wait for the phone to ring 24/7 is not consistent with his evidence that he went shopping with his family and that he pursued hobbies. The claimant explains that the reason why people were unable to contact him was because the reception on his phone was not good, and I find that account is inconsistent with the claimant's suggestion that he was confined to his home waiting for the telephone to ring unless he seeks to say that he only took calls whilst in his home. More credible is the explanation that the claimant did go about his day to day activities at the

home, at the church and out and about and, on occasions when members of the congregation rang him, they would on occasions encounter difficulty getting him to answer the calls.

44. When the claimants last period of secondment came to an end in 2016 the claimant did not follow the directions of the Church in Greece to apply to renew the secondment. In light of the claimant failure to apply to seek to renew the secondment from the Church in Greece he ultimately returned to Greece to be assigned to serve as a priest in a community within the Archdiocese.

45. I have not been referred to any written documentation between the claimant and the respondent to evidence an intention to create a contract of employment. Neither party has suggested that there was an express contract whether in writing or verbal reached between them that was distinct from the claimants employment in Greece or the terms of his secondment to the host diocese the Greek Archdiocese of Thytateria & Great Britain, West Europe, Ireland and Meliti. The claimant seeks to rely entirely upon the terms of an employment contract with the respondent being implied between them. I have not been referred to any evidence of any express or implied terms which were agreed or implied into the relationship between the claimant and the respondent to suggest that their relationship after 2014 was any different to that which it was prior to that date. The claimant has given no evidence to suggest that terms were agreed expressly or implied of necessity or at all with the respondent.

Conclusions

46. I am grateful to the representatives of both parties for the submissions both in writing and as supplemented by them orally. The claimant seeks to say that he was contracted as an employee by the respondent, he does not point to any written agreement to that effect. As a starting point I have considered what arrangements there were by which the claimant was assigned to be a priest in the community to whom the respondent are trustees. Both parties agree that the claimant was and remained, the entire time he worked as a priest in the Birmingham community, a priest serving the Greek Orthodox church and an employee of the Greek state.

47. The claimant was seconded by his Archbishop in Greece from the Metropolitan of Polyanis & Kilkisiou to minister within the diaspora to the Greek Archdiocese of Thyateira and Great Britain, West Europe, Ireland and Meliti and at the direction of Archbishop Grigorios.
48. There are a number of authorities to which I have been referred in relation to ecclesiastical arrangements and, while they are helpful, I remind myself that each case is to be considered on its facts and a good starting point seems to be to consider in turn whether there was an express contract of employment, whether there can be implied to be a contract of employment, whether the claimant was a worker or if the relationship that he had with the respondent was one arising from his holding office as a priest in the community.
49. Such express terms relating to the claimant's appointment to serve as a priest in the respondent's community are those set out as detailed in the Articles of Association of the Holy Churches and Communities of the Greek Archdiocese of Thytateria & Great Britain, West Europe, Ireland and Meliti [248]. The role and duties of Head Priest are set out in the Fourth Article and govern the day to day spiritual and secular responsibilities of the office. The only discussion between the respondent and the claimant was the visit of the claimant to the parish to agree the suitability of his ministering to the community in Birmingham. The claimant has not been able to identify to me any express agreement between him and the respondent or negotiation of terms other than the respondent's acceptance of the claimant as their priest as directed by Archbishop Grigorios. The terms of the secondment to the parish were those that had been the traditional arrangement and the stipend paid to the claimant was not a matter of negotiation.
50. The expectations of what job the Head Priest was required to do was not a matter of negotiation between the claimant and the respondent, rather I have found that the role as described in the Fourth Article was identified to be in accordance with the provisions of the Articles of Association of the Church and the Holy Rules. The respondent had no control over the claimant in the way in which those terms of his appointment as a Head

Priest were to be performed or over the terms on which the secondment could be brought to an end.

51. I turn consider whether or not there was a contractual relationship between the claimant and the named respondent. The claimant has not sought to assert that there was a dual contract between the respondent and the claimant's accepted employer, the Greek State. I consider whether the arrangement between the claimant and the respondent under the secondment arrangement was a contract of employment. The secondment arrangement set out in Article 60 [witness statement bundle 71] was one that provided for the salary to be paid on full pay throughout the secondment and that the claimant confirms continued to be paid to him in Greece. A stipend was paid to the claimant and he was provided with accommodation and a car to enable him to perform his Fourth Article duties as Head Priest while in the community in Birmingham as an augmentation of the pay in Greece.

52. The arrangement was one that was traditional made with the Head Priest who was seconded to serve the respondent community in Birmingham. The arrangement did not change as Mr Jaffier has suggested the relationship did in 2014. Mr Jaffier has suggested in his closing that the claimant felt he had to do additional duties which were beyond those articulated in Article 4 as being the role and responsibilities of a Head Priest. The key consideration is whether as Mr Jaffier and also the claimant himself states that it was he who took the initiative and developed the role as he did in a different and direct arrangement with the respondent. To the extent that the claimant chose to work in the way that he did and introduced new ways of doing what he did I have found it is indicative that the claimant worked, not under the control direction and of the respondent, in his role as Head Priest and there is nothing that I have found leads me to imply in the absence of any express terms there was a contract agreed between the claimant and the respondent.

53. To the extent that the claimant was paid the stipend that he was and provided with accommodation and a car and his expenses were paid I have

considered whether there is a contract of employment implied in this case with the respondent.

54. Although the claimant was paid his stipend through the respondent payroll [206-212] that accounting to HM Revenue & Customs does not of itself dictate that the arrangement was one of employment for the purposes of the employment legislation. Tax treatment is of itself a neutral act. If the claimant seeks to assert that there was a contract of employment implied in this case, I am referred by both parties to the guidance that is provided in Preston and also in Sharpe.

55. In this case, as in Preston the claimant was provided with a stipend and accommodation and in this case also with a car and he was paid expenses. The provision of the benefits and stipend was due to the claimant only because of his being the priest to serve the respondent community. There was no special arrangement made with the claimant as a particular minister. The rights and duties of the claimant in this case arose as a result of the Regulations, Article 13 dealing with Secondment of regular vicars and Article 15 Suspension of Vicars [witness statement bundle 20] and Article 60 Secondment of priests [witness statement bundle 71] and as amplified in the Fourth Article of the Articles of Association [248]. Having regard to the written documentation to which have been referred I conclude that the arrangements with the Head Priest, the claimant in this case, are governed entirely by the Rules of the Church and not from any contract between the claimant and the respondent.

56. Mr Jaffier in his submissions has suggested [para 2] that the claimant by virtue of his secondment *“was directed by and did owe duties to the respondent, as Host, and not only to the Church in Greece, as the Secunder”*. I must disagree with Mr Jaffier. The documentary evidence to which I have been referred is consistent, the claimant remained at all times employed by the Greek State as a priest of the Greek Orthodox Church and he was seconded to the Greek Archdiocese of Thyateira & Great Britain and under the terms of the secondment he was assigned by Archbishop Grigorios on behalf of the Archdiocese to the community in Birmingham which was governed by the respondent.

57. Mr Jaffier suggests that this case can be distinguished from the decision of the Supreme Court in Preston. However like the ministers duties in Preston being conferred by the decisions of the Conference the claimant's secondment was subject to the approval of the Holy Synod and his assignment to the community in Birmingham and the role and duties were subject to the Fourth Article of the Greek Archdiocese of Thyateira & Great Britain [248-249].

58. For all of the above reasons I conclude that there was not a contract in existence between the claimant and the respondent. Furthermore I conclude that in the context of a secondment and assignment to the Community in Birmingham there was no evidence of an intention to create a legal relationship between the claimant and respondent whether in June 2008 when the claimant began his assignment, in 2014 or at any time thereafter.

59. In this case, as in Preston, the manner in which the claimant was engaged by the respondent is incapable of being classed as a contract between them. The stipend and accommodation and other benefits provided to the claimant by the respondent were due to him only as a result of him holding the office of Head Priest to the community at the direction of the Archbishop Grigorios in his capacity as the leader of the Archdiocese to which the claimant was seconded with the permission of the Synod. The respondent in this case does not have any right to terminate the claimant's assignment as Head Priest to the Community. The Fourth Article [249] provides paragraph 4 that the Head Priest, due to his title represents the Archbishop before the Community and the Council and at paragraph 6 the Article provides that any dispute between the Head Priest and the Board of Directors of the Community is to be referred to the Archdiocese. Similarly the secondment arrangements by which a priest was seconded to the diaspora is at the will of the Church in Greece and the permission of the Synod, the respondent did not have the right to discipline or terminate the assignment of the claimant to the community as its Head Priest.

60. In conclusion I determine that there was no contractual relationship between the claimant and the respondent whether express or implied.

61. I turn to consider the question whether the claimant was a worker engaged by the respondent, a worker is a person who is engaged in a contract with the other party and who cannot establish that he is an employee. I have reached the conclusion above that there was no contractual relationship between the claimant with the respondent and in those circumstances on any view there was not a contract in respect of which the claimant can claim that he was working for the respondent under "*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*". Absent a contract between the parties as I have found to be the case in this relationship the claimant cannot be described to be a worker for the respondent.

62. Finally, I am asked by the parties to identify whether the claimant was an office holder with the respondent. The claimant cannot be said to be a statutory office holder in this case. The claimant is a priest of the Greek Orthodox Church and in holding that position seconded to the Archdiocese of Thyateira & Great Britain where Archbishop Grigorios had assigned him to the position of Head Priest to serve the Community in the respondent community. It is as a result of holding the position of Head Priest that the claimant was in receipt of a stipend, accommodation and other benefits provided by the respondent as a supplement to his salary and remuneration package provided to him by the Greek state. To the extent that the claimant is an office holder the office is not at the gift of the respondent.

63. In conclusion and for the reasons I have set out I conclude that:

- a. the the claimant is not an employee of the respondent within the meaning of s83 of the Equality Act 2010
- b. The claimant was not an employee of the respondent within the meaning of s 230 Employment Rights Act 1996.
- c. The claimant was not a worker of the respondent.

64. The tribunal does not have jurisdiction to entertain the claimants complaints against the respondent.

Employment Judge Dean
3 November 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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