EMPLOYMENT TRIBUNALS

Claimant: **Andrew Dorgan**

Respondent: **West Coast Trains Limited trading as Virgin Trains**

Heard at: **Birmingham** **On: 4 September 2019**

Before: **Employment Judge Gilroy QC**

Representation

Claimant: Ms C Jones (Counsel)
Respondent: Mr N de Silva (Counsel)

JUDGMENT

The judgment of the Tribunal is as follows:

The Claimant was not employed by the Respondent under a contract of apprenticeship. The Claimant's claim is therefore dismissed.

REASONS

Background

1. This is a claim of breach of contract. It was the agreed position between the parties (a) that the Claimant entered a fixed term contract with the Respondent for a period of 12 months commencing on 9 July 2018, and (b) that the Respondent terminated the Claimant's contract early, with effect from 5 November 2018, citing a number of reasons for such termination, including timekeeping, attendance, performance (quality and productivity), attitude and potential. The issue between the parties was that on the Claimant's case his contract with the Respondent was a contract of apprenticeship, with the consequence that the Respondent was not entitled to dismiss him on the grounds of performance. The Respondent contended that the Claimant was not an apprentice, and that it was therefore entitled to terminate his employment on the basis indicated. The Respondent accepted that if the Claimant had been

employed under a contract of apprenticeship, it would not have been entitled to dismiss him on the grounds of performance. For his part, the Claimant did not pursue an alternative positive case that in the event that the Respondent was entitled *as a matter of principle* to terminate his employment on the grounds of performance, the Respondent nevertheless acted in breach of contract by terminating on those grounds. It was accepted on behalf of the Claimant that if he had not been engaged by the Respondent under a contract of apprenticeship he would have no claim for breach of contract against the Respondent. The determinative issue in the case, therefore, was whether the Claimant was employed by the Respondent under a contract of apprenticeship.

2. It was agreed that the Tribunal would deal with liability in the first instance and that, if the Claimant succeeded on that issue, remedy would be considered as a separate matter thereafter.

3. It is important to note that given that the focus of the Tribunal was the status of the Claimant's relationship with the Respondent (in other words whether or not he had a contract of apprenticeship) it was not relevant to the Tribunal's inquiry to make any assessment as to the Claimant's level of performance during his employment with the Respondent, save to make reference to the fact that his performance was the subject of review, and to mention certain matters which occurred towards the end of his employment. Suffice it to say that the Claimant challenged the suggestion that there were deficiencies in his performance. For the avoidance of doubt, however, for the reasons stated above, the Tribunal did not reach any view on the issue of the level of the Claimant's performance in his role.

Evidence and Material before the Tribunal

4. The Claimant gave oral evidence. The Respondent called as witnesses Ms Cheryl Jackson (Talent Delivery Manager), and Ms Ashley Paynter (Team Leader). All witnesses who gave oral evidence provided written witness statements, which were taken by the Tribunal "as read" and treated as their evidence in chief.

5. The Tribunal was provided with an agreed bundle of documents [**R1**]. Both Counsel provided written skeleton arguments. The Respondent's skeleton argument contained a Chronology of principal events. Counsel also provided the Tribunal with copies of the following authorities: ***Edmonds v Lawson and Others (Court of Appeal [2000] QB 501)***, ***Wallace v C A Roofing Services Ltd [1996] IRLR 435, High Court)***, ***Autoclenz Ltd v Belcher [2011] UKSC 41 [2001] ICR 1157, Chassis and Cab Specialists Ltd v Lee [EAT] [UKEAT/0268/10/JOJ], Dunk v George Waller & Son Ltd [1970] 2 QB 163 (CA)*** and ***Axis Telecom and Servizon Limited v HMRC (First Instance Employment Tribunal sitting at Hull, Case Nos: 1800196/2012 &***

1800200/2012). Counsel also produced a copy of s.A5 of the Apprenticeships, Skills, Children and Learning Act 2009. At the conclusion of the hearing, counsel supplemented their skeleton arguments with oral submissions. The full detail of the parties' written and oral submissions is not set out in this judgment. As indicated at the conclusion of the hearing, the Tribunal was grateful to both Counsel for their pithy and focused submissions, both written and oral.

Findings of Fact

6. The Tribunal made the following findings of fact:

(1) In 2018, the Claimant applied to the Respondent for the position of Customer Resolutions Advisor, "CRA". He was successful in his application. During the interview process, he was told that he would be supernumerary to any team he worked with, that his work would be subject to review, and that he was required to participate in a workbased training programme.

(2) By letter dated 22 June 2018, the Respondent formally offered the Claimant *"the fixed term position of Customer Resolutions Advisor within the Customer Resolutions Team based at Victoria Square House, Birmingham"*. It was said that his appointment would be subject, amongst other things, to a six month probationary period. The offer letter also stated: *"You will also undergo a 12 month development plan including off-the job training and a qualification (Level 2 Customer Service Practitioner) upon successful completion"*. The letter stated that the Claimant's employment with the Respondent would terminate on 13 July 2019 and whilst it contained a reference to *"your first 12 months"*, it was agreed between the parties that the Claimant was offered a 12 month fixed term contract. Towards the end of the offer letter there appeared the following: *"Additionally as part of your appointment we require that you bring along the following documents on your first day.*
- *"Original Maths and Examination certificates (GCSE, Scottish Standard Grades or equivalent) - FOR APPRENTICESHIPS ONLY".*

(3) The Claimant was provided with a *"Management Staff Contract of Employment Fixed Term"*. That contract did not state that the Claimant had been engaged by the Respondent as an apprentice.

(4) The Claimant attended induction training at Crewe. It was the Claimant's case that during this period of training he was told that he was an apprentice, as were all other new starters. The Claimant also stated in evidence that the attendees at the relevant training were told that their wage reflected the fact that they were apprentices. It was the Claimant's

case that he was constantly referred to during the training as an apprentice.

(5) The Claimant told the Tribunal that he was aware that at the relevant time, a CRA employed by the Respondent but not on the work based learning programme would have earned a starting salary of £22,696 per annum, whereas the Claimant's salary was £19,950 per annum.

(6) The Claimant told the Tribunal that he believed that he was given a Virgin Train Pass (a Duty and Leisure Pass) which was different to those not on the work based leaning programmes, who only received Leisure Passes.

(7) The Respondent produced a copy job description for the CRA post. That document was signed *"pp. Laura Panter (Regional Talent Partner)"* and dated 22 June 2018. The document was not signed by the Claimant. In the section of the job description headed *"Experience, Skills and Knowledge"*, the following was stated, amongst a number of other matters: *"Please note this role involves gaining an apprenticeship qualification"*.

(8) During his training at Crewe, the Claimant was given a copy of a booklet entitled *"CLOCK'S TICKING ! ARE YOU READY TO ROLL ? Customer Service - Level 2 Candidate Handbook"*. This was a Virgin Trains publication. Recipients of this booklet were asked: *"Wondering what the next 13 months of your apprenticeship has in store ?"* In another section of the booklet there appeared the following: *"Now you're an employee of Virgin Trains and a student on our Customer Service Apprenticeship we're looking for the highest standards of behaviour right from the start"*. The booklet further stated: *"The first 2 weeks of your apprenticeship are pretty heavy …"* The booklet contained reference to certain methods of assessment for various *"modules"* under a heading which stated *"During your apprenticeship, you'll be asked to collect evidence that proves you have what it takes to be a customer service professional"*.

(9) It was the Claimant's case that there was no doubt in his mind that he was an apprentice and that the level of scrutiny he was subjected to was enormous.

(10) The Respondent produced some training records which indicated that on 9 July 2018 the Claimant commenced on a course referred to as *"Apprenticeship Orientation"*. The Respondent produced further training details which indicated that the training the Claimant received was the same as any new starter in the Customer Resolution Centre would have had, ie regardless of whether they were completing an apprenticeship or not.

(11) The Respondent also produced an e-mail sent by Cheryl Jackson on 24 May 2019 headed *"Apprentice Return week for Andrew Dorgan"* which was said to provide details of *"the week that Andrew came back to the Academy for his return week"*. This was a reference to the Claimant's second training week in September 2018 (paragraph (21) below refers). The e-mail contained a table which included a column which was of general application to the table in its entirety and which stated: *"Apprenticeship Cohort (Group 2) 18-6, Talent Academy Return (1)"*.

(12) The Tribunal was provided with a copy of the Apprenticeship Standard produced by the Institute for Apprenticeships & Technical Education, which essentially set out the specification for a Level 2 Customer Service Practitioner Apprenticeship. The Respondent is able to claim funding via the Apprenticeship Levy Scheme to deliver recognised apprenticeship standards which are developed (usually in conjunction with other public and commercial organisations) by the Institute for Apprenticeships. The levy consists of money taken from employers with a payroll of over £3,000,000. The Government take 0.5% of a qualifying company's payroll bill which is then used as a central fund. Companies can then claim the levy back to fund the delivery of the apprenticeship standards. Companies can either become an approved training provider and provide training in-house (which the Respondent has done) or engage with an external training provider who will deliver on the company's behalf.

(13) In or around June 2017, the Respondent decided that in order to utilise the apprenticeship levy funding, it would offer new recruits into the CRA role the opportunity to obtain a qualification whilst they were undertaking their normal day to day duties. The Respondent decided to offer new CRA recruits the opportunity to gain Level 2 qualification in Customer Service, which would effectively give the relevant individuals an ability to gain a formal qualification equivalent to an NVQ2.

(14) The CRA role was primarily a customer service type role. It was the Respondent's case that it did not regard those entering the CRA role as being part of a traditional apprenticeship scheme, unlike apprenticeships that the Respondent operates in HR or with Onboard Customer Service Assistants.

(15) The Respondent's position was that offering new recruits into the CRA role the above opportunity was simply an opportunity for them to gain a qualification equivalent to an NVQ2 once they worked in their normal role. It was the Respondent's position that although the qualification was one that was available under the approved apprenticeship scheme, it was not intended that the Claimant would be employed under a contract of apprenticeship.

(16) When the Claimant began his employment, the Respondent applied for levy funding of £4,000. The total sum would only be received in full once the employee completes the qualification. Because the Claimant did not complete his training the company obtained partial funding only, in the sum of £984.62.

(17) The Claimant's cohort of CRA recruits was the last to be offered the opportunity of obtaining the Level 2 qualification in Customer Service. In total, around 35 employees had been offered and accepted the opportunity to obtain that qualification. Some of that number have now left the business and the Respondent is now waiting for all of those remaining in employment to complete the qualification whereupon it intends to assess the position going forward.

(18) The Respondent produced to the Tribunal a document described in the index to **[R1]** in these terms: *"Copy of Application for Apprenticeship Levy relating to the Claimant"*. On this document, underneath the Claimant's name, there appeared the term *"Apprentice status",* and against the entry *"Apprenticeship training course"* the form states *"Customer service practitioner Level: 2 (Standard)".*

(19) It was the Claimant's case that during his probation reviews, the reviewers would refer to him as an apprentice.

(20) On 6 August 2018, the Claimant received a one month probation review which was in generally favourable terms.

(21) The Claimant had a further week of training in September 2018.

(22) The Claimant then received what might be described as a "below average" probation review on 3 October 2018.

(23) The Claimant recalled that on one occasion when there had been major disruption on the line north of Preston, he sensed that there was a lack of direction from the Team Leaders, leaving him to feel isolated, as did his colleagues. It was the Claimant's belief that when he raised this at his next review there was a change in attitude towards him.

(24) It would certainly appear from internal e-mails that towards the end of October 2018, the Claimant's trainers were forming a negative view about his abilities. Whether those views were justified is, of course, not germane to this case. The Tribunal was provided with a performance spreadsheet relating to the Claimant which was essentially a timeline of relevant incidents and events during the course of the Claimant's employment. Again, save for the instances where his employment status was being referred to or articulated, and save that it is relevant to record that his

performance was being monitored, the interactions between the Claimant and the Respondent on the matter of his performance during the course of his employment are not relevant for the purposes of this judgment.

(25) By letter dated 1 November 2018, Ashley Paynter invited the Claimant to attend a meeting on 5 November 2018 for the purposes of discussing his probationary period, including issues of timekeeping, attendance, performance and attitude and potential. It was intimated to the Claimant that depending on the facts established at the meeting, the outcome could be the termination of his employment.

(26) Fairly detailed minutes were taken of the meeting of 5 November 2018 which was attended by Ashley Paynter and Sarah Sheldon (whose position was not identified), the Claimant, and Nick Brown, the Claimant's trade union representative. Again, the Tribunal did not review this document with a view to making any finding as to the Claimant's level of performance in his role but rather considered the document in the context of the issue it had to determine, namely the Claimant's status.

(27) In this regard, the Tribunal noted from the minutes that under the heading "*Attitude"*, the following comment was attributed to Mr Brown:

"NB asked if we could provide evidence highlighting how AD is performing against others and guidance as part of his apprenticeship on where AD should be at this point in his probation period".

According to the minutes of the meeting, Mr Brown's reference to the Claimant's *"apprenticeship"* was not the subject of any comment by anyone else present.

(28) At the conclusion of the meeting, Ms Paynter informed the Claimant that *"given the concerns around quality and productivity it was not sustainable for our operation to continue and ended AD's contract"*. In short, the Claimant was dismissed with immediate effect.

(29) By letter dated 12 November 2018, Ms Paynter confirmed to the Claimant that his contract of employment with immediate effect, in view of what was said to be his unsatisfactory performance.

(30) The Claimant appealed against his dismissal and his appeal was conducted by Ms Amy Moore (HR Support-Midlands) on 8 January 2019. During the course of the appeal, both Mr Brown and the Claimant made references to the Claimant being an apprentice. It would appear that Ms Moore did not challenge either of them in their use of that terminology.

(31) Since 2017, all new CRA recruits together with other employees in separate roles and departments are sent to undertake initial orientation training at the Respondent's Academy in Crewe. It was the Respondent's case that because the Claimant was working towards the above-mentioned Level 2 qualification, for the purposes of the Respondent's documentation and because of the funding position through the apprenticeship levy scheme, the Claimant's CRA cohort would be recorded in the paperwork as *"Apprenticeship Orientation"* irrespective of whether they had contracts of apprenticeship. It was the Respondent's case that this was purely a matter of labelling.

(32) It was also the Respondent's case that the booklet referred to at paragraph (8) above was created for "front line" Customer Service Assistants who were also working towards the Level 2 Qualification and that it was not created for the CRA roles or those working in the Customer Resolutions Centre, "CRC". It was the Respondent's position that the booklet was given to the Claimant and other CRA's purely for reference purposes as it contained useful information, for example, about the units within the Customer Service Level 2 apprenticeship which needed to be completed. The Respondent maintained that it was not created with the CRA role in mind but at the time the team did not wish to have a new document designed and printed when the majority of the document was "fit for purpose".

(33) The Respondent accepted that it was possible that when the Claimant attended the Academy in Crewe he may have been referred to as an *"apprentice"*, but suggested that this would simply have been because he would have attended the training with other genuine apprentices and because he was undertaking the Level 2 Qualification, without the individuals who were addressing him in such terms fully understanding the Claimant's true status. In essence, it was the Respondent's position that the Claimant worked in the CRC, and undertook the same training as other CRA's.

Submissions for the Respondent

7. For the Respondent, Mr de Silva submitted that "contracts of apprenticeship" are contracts under the common law (***Wallace v CA Roofing Services Ltd [1996] IRLR 435***), that they are of a special character, and that their essential purpose must be training, the execution of work for the employer being secondary (***Dunk v George Waller & Son Ltd [1970] 2 QB 163 (CA)***, and ***HMRC v Jones [2014] UKEAT 0458/13***).

8. Mr de Silva submitted that an "apprenticeship agreement" is a statutory form of apprenticeship which was introduced into England and Wales by the Apprenticeships, Skills, Children and Learning Act 2009 and that following

amendments to the Act, *"approved English apprenticeships*" were introduced in May 2015. Mr de Silva observed that these are not to be treated as contracts of apprenticeship but as contracts of service (see s.A5 of the 2009 Act). The Claimant was not employed under such an agreement. The contracts offered to people in the position of the Claimant did not state that they were statutory apprenticeship agreements. The Claimant's offer letter referred to the Level 2 Customer Service Qualification but made no reference whatsoever to an apprenticeship. The Claimant's contract of employment was, Mr de Silva submitted, clearly a simple contract of employment, containing as it did the typical features of such an agreement and making no reference to apprenticeship.

9. Mr de Silva relied upon the contents of the job description. He submitted that there was clear contemporaneous evidence of the Claimant being assessed in his performance of the role. It was accepted that he had been referred to, for example, during training, as an apprentice but this, it was submitted, was no more than a generic label applied to all of those individuals who were engaged in training of some form at the relevant location at the relevant time.

10. Mr de Silva submitted that the case on liability turned on the issue of whether the Claimant was employed under a common law "contract of apprenticeship". The test was whether training was the primary purpose of the contract and that test had not been made out. It was submitted that this was clear from the offer letter, the contract of employment and the job description. It was further submitted that it was clear from the above documents that the Claimant would be required to execute work for the Respondent, not simply in the course of training, but as the essential purpose of the contract. New recruits in the year of the Claimant's intake were also given training to achieve a qualification that was part of the approved apprenticeship scheme and in this context he was referred to as an apprentice, but descriptions such as these could not be regarded as determinative (it was submitted that in this case they were of no relevance at all) and this was not the primary purpose of the contract.

11. It was further submitted that it was clear from the performance of the contract that training was not the primary purpose of the contract. Nothing supported the Claimant's characterisation of the relationship as a work-based training programme.

12. Mr de Silva invited the Tribunal to dismiss the claim.

Submissions for the Claimant

13. Ms Jones or the Claimant referred to the definition of a contract of apprenticeship provided by the Court of Appeal in the case of ***Edmonds v Lawson & Others [2000] QB501*** (a case concerning a barrister in pupillage) at paragraph 30 per Lord Bingham:

"A contract of apprenticeship or any equivalent contract is … a synallagmatic contract in which the master undertakes education training the apprentice ….. in the practical and other skills needed to practise a skilled trade ….. and the apprentice …… binds himself to serve and work for the master and comply with all reasonable directions".

14. Ms Jones relied upon the decision of the High Court in ***Wallace v CA Roofing Services Ltd [1996] IRLR 435*** as authority for the proposition that although a contract of apprenticeship can be brought to an end by some fundamental frustrating event or repudiatory act, it is not terminable at will as a contract of employment is at common law.

15. As is the position in relation to so many situations which give rise to an analysis of the facts so as to ascertain what the true legal position is, the law looks to the *substance* of the arrangements rather than their *form* when seeking to determine such matters. In this regard, Ms Jones relied upon the well known case of ***Autoclenz Ltd v Belcher & Others [2011] ICR,*** a decision of the Supreme Court. In that case it was held that where, taking into account the relative bargaining power of the parties, the written documentation might not reflect the reality of their relationship, and it was necessary to determine the parties' actual agreement by examining all of the circumstances, of which the written agreement was only a part, and to identify the parties' actual legal obligations. In such circumstances, it is open to a Court or Tribunal to disregard the terms of the written documents insofar as they are inconsistent with the findings of the Tribunal or Court as to the true status of the individuals concerned.

16. Ms Jones placed reliance upon the Respondent's contemporaneous use of the terms *"apprentice"* and *"apprenticeship"* in its dealings with the Claimant. She placed emphasis on the fact that the Claimant was under a significant degree of supervision. She submitted that the input from his Team Leaders was "*far exceeding that which one would expect for a normal employee".* Ms Jones also pointed out that the Respondent had obtained government funding on the basis that the Claimant was an apprentice.

17. Ms Jones suggested that the instant case bore many similarities to those under consideration in ***Chassis and Cab Specialists v Lee UKEAT/268/10***, in which the *"essential purpose"* of the contract was that the Claimant obtain a qualification, internal paperwork referred to him as an apprentice, there was regular oral use of the word "apprentice", and his work was supervised. In that case, the then Mr Justice Underhill, at the time the President of the EAT, stated (at paragraph 21 of the judgment): *"The fact that the Claimant was described in (the) internal paperwork as being on an apprenticeship programme is evidence of how at least one experienced party to the relationship regard of it. It is true that the term "apprentice" was not used in the (relevant agreement) or in any document involving the Appellant and the Claimant. But the way that the parties described their relationship in the documentation is not determinative; and in any*

event …… some significance must be attached to the fact that the parties made regular oral use of the term 'apprentice'".

18. Ms Jones submitted that apprenticeships under the Apprenticeships, Skills, Children and Learning Act 2009 were nothing to the point. She submitted that no-one was suggesting that the Claimant had a statutory apprenticeship. The Claimant's contract provided for service and provided for training. Some degree of work was necessary for any apprenticeship contract. An apprenticeship contract typically involves training and a reasonable amount of work. Ms Jones also submitted that the lack of an apprenticeship "label" within the Claimant's contract was not fatal to his case.

19. Ms Jones submitted that the qualification was not a "bolt-on". The qualification was to be obtained over the course of the same period of time as the fixed term contract and the offer letter made the qualification highly integral. It was not an optional extra. Over the period of his service the Claimant received relevant training and was also trained up in the CRA role. As well as his training in the Academy, he had fairly extensive training in the CRC. His assignments were tailored. The Team Leaders received feedback on how he was performing in the Academy. The Claimant was not doing the full CRA role. He had very restricted duties. The difference in wages between what the Claimant earned and what a CRA advisor employed by the Respondent but not on the workbased learning programme was significant (see the judgment of Lord Denning MR in ***Dunk v George Waller & Son Ltd [1970] 2QB163*** at G on p.167).

20. The Respondent's free use of the words *"apprentice"* and *"apprenticeship"* was, submitted Ms Jones significant. It was also significant that the HR professional who conducted the appeal hearing in this matter said nothing by way of challenge to the suggestions made during the course of the appeal hearing that the Claimant was (or had been) an apprentice.

21. Ms Jones invited the Tribunal to conclude that the Claimant was employed by the Respondent under a contract of apprenticeship, and to uphold his claim.

Discussion

22. The Tribunal must proceed with caution when assessing the probative value of the terminology used by the parties during the course of the Claimant's employment with the Respondent. As the authorities demonstrate in relation to the ultimate issue in this case, the use of terms such as *"apprentice"* and *"apprenticeship"* are not determinative, and the Tribunal must not lose sight of the overriding principle which is that in order to determine the true status of the Claimant's contract it is necessary to ascertain its primary purpose.

23. As it happens, the "labels", such as they are in this case, are not consistent in any event.

24. The Claimant's formal offer letter of 22 June 2018 does not refer to the Claimant being taken on as an apprentice. Whereas it does refer to a requirement "*FOR APPRENTICESHIPS ONLY"* for copies of school examination certificates to be produced on the first day, those to whom that requirement applied no doubt produced such documents. Essentially, the invitation was to produce such documents "where applicable", in other words the documents would only have to be produced by those recipients of such a
letter who were being offered contracts of apprenticeship.

25. There is no reference in the Claimant's contract of employment to the Claimant being regarded as an apprentice or engaged on an apprenticeship. There is one reference to apprenticeship in the job description, but that is a neutral document in that (a) the relevant entry simply states that the role *"involves gaining an apprenticeship qualification"*, and (b) the relevant document was not signed by the Claimant.

26. Whereas the Claimant was informed in his offer letter that he would have the ability to obtain the Level 2 Customer Service Practitioner qualification upon successful completion of his training, this was to simply record the Respondent's intention of offering him the ability to gain an additional qualification. This of itself does not elevate the Claimant's contract to a contract whose primary purpose was training.

27. What might be described, therefore, as the "important" or "primary" paperwork, all pointed to the Claimant not having been employed under a contract of apprenticeship.

28. The Tribunal accepted the Claimant's evidence that he was referred to in his initial training as an "apprentice", but concluded that this was of limited probative value, given the likelihood that this term would have been used as a point of reference for all "trainees" (ie participants in training). There was no definitive first hand evidence to support the Claimant's assertion as to the difference in pay between someone with a contract such as his, and a CRA employed by the Respondent but not on the work based learning programme. Similarly, there was no evidence, apart from the assertions made by the Claimant, as to there being any difference between the classes of train pass allocated by the Respondent to different categories of employees, or as to the significance of any such difference.

29. The Tribunal could not accept the proposition that the receipt by the Claimant of the "CLOCK'S TICKING" booklet could be equated with the Claimant having the status of an apprentice. In this regard, the Tribunal accepted the Respondent's evidence that the booklet was not created with the CRA role in mind but that at the time the relevant staff within the Respondent did not wish to have a new

document designed and printed when the majority of the existing document was "fit for purpose".

30. The evidence as to training records was either neutral or contradictory. On the one hand, the Tribunal was provided with records, which indicated that the Claimant commenced on *"Apprenticeship Orientation"*, whereas on the other hand there was evidence that the training the Claimant received was the same as any new starter in the CRC would have had, apprentices and nonapprentices alike.

31. It is correct that the Respondent obtained apprenticeship levy funding in respect of the Claimant. The Tribunal concluded, however, that this was simply because the Respondent wished to give new CRA recruits (including the Claimant) the opportunity to gain the Level 2 qualification in Customer Service, and it wished to utilise such funding in order to enable it to do so. That of itself did not mean that the primary purpose of the Claimant's contract was training. Similarly, the fact that Ms Paynter did not pass comment at the meeting on 5 November 2018 as to the single reference at that meeting to the term "apprenticeship" did not support the conclusion that the primary purpose of the Claimant's contract with the Respondent was that of training. Ditto the similar references made at the appeal hearing on 8 January 2019.

32. The 2009 Act is a red herring. The Tribunal is plainly not concerned in this case with statutory apprenticeships.

Conclusion

33. Having regard to all of the circumstances, the Tribunal found that training was not the essential purpose of the Claimant's contract with the Respondent. Rather, the Claimant was employed to work for the Respondent, and he was offered the opportunity, within the context of that employment relationship, to obtain a qualification.

34. For the above reasons, the Claimant's claim must be, and hereby is, dismissed.

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Employment Judge Gilroy QC

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Date 20.11.2019