



Case Number: 3321628/2019 (V)

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs C Crawford

**Respondents**

1 Image IT Ltd

2 Mr G Hill

and

**Held by CVO on 4 February 2021**

**Representation**

**Claimant:**

Mr S Liberadzki,  
Counsel

**Respondent:**

Mr C Kelly, Counsel

**Employment Judge Kurrein**

## JUDGMENT

At all material times the Claimant was an employee of the First Respondent.

## REASONS

### The Issue

- 1 This matter came before me for an open preliminary hearing to determine the status of the Claimant's engagement by the First Respondent from October 2015 to April 2018.

### The Evidence

- 2 I heard the evidence of the Claimant on her own behalf, the evidence of Mr Hill, controlling director, and Mrs White, production manager, on behalf of the Respondents. I read the documents in a bundle to which I was referred and heard and considered the submissions made on behalf of parties. I make the following findings of fact.

### Findings of Fact

- 3 It was common ground between the parties that the Claimant was an employee of the First Respondent from 1 January 2012 until late October 2015. It was

also common ground that whatever her status was thereafter it remained the same throughout.

4 The Claimant was born on 13 January 1988 and worked for the First Respondent as an employee from 1 January 2012 as a graphic designer.

5 The First Respondent is an “instant print” provider, which also offers graphic design services.

6 The Claimant worked five days a week, Monday to Friday, 8.30 to 5.30. She described herself as a graphic designer/pre-press Mac operator producing digital files for CMYK print. The First Respondent had a franchise with “printing.com” for litho printing, and the Claimant was the only person able to operate that software. Although that was her principal work I accepted that she also met clients, answered the phone, took and processed orders, served customers, took payments and printed invoices and, on occasions, helped out in the production department.

7 There does not appear to have been any written record of the Claimant’s employment, and she was not issued with a statement of terms and conditions of employment. The Claimant salary at the time of her resignation was £17,000 per annum.

8 On about 23 October 2015 the Claimant wrote to the second respondent in the following terms,

“Please accept this letter as notice that I wish to resign from my position as graphic designer at Image It. My last day of employment will be Friday 6th November.

I would like to take this opportunity to thank you for the experience and I wish Image It the best of luck for the future.”

9 The Claimant’s decision to leave her employment was prompted by an offer of employment by Rugby college. That post was full time and the Claimant would have been paid at a rate of £15 per hour.

10 It was clear from the evidence before me that Mr Hill was not happy to be losing the Claimant. He wasted no time in seeking to recruit a replacement, placing advertisements and emailing contacts within a week. He also discussed the situation with the Claimant and offered to better the pay she had been offered by Rugby College.

11 Mr Hill wrote to the Claimant on 30 October 2015 in the following terms ,

“It is with much reluctance that we accept your letter of resignation of Friday 23rd October and acknowledge your last working day Friday 6 November.

I wish to thank you for the three years of service and the contribution you have made to the business success during this. You have been and are a valued member of the team and will be greatly missed.

I very much appreciate that you are available to come back to work on Friday 27 November to provide cover with [Mrs White] while I’m away in Devon. Ideal hours would be 9:00 AM through to 5:00 PM taking an hour

for lunch. For this we agreed to pay you £120 which can be paid into your final salary this month, if you prefer.

In addition to the above day, I sincerely hope that we can continue to use your skills on a freelance basis once you better understand your available weekly hours.

To clarify, we are offering you work on a freelance basis, based at Image It premises at a rate of £18 ph, ideally in five hour blocks, once a week should your availability allow.

As discussed, I would again appreciate the offer of your assistance to help me train any new employees with the PDC process, once we appoint a replacement for your role. For this service we would apply the same hourly rate quoted above.

Charlotte, I wish you every success in your future employment and every blessing to you and Dan as you plan your family life together. Please do keep in touch with us all here and call in whenever you're passing, we would love to see you."

- 12 The Claimant did not take up the job at rugby college. She continued working for the First Respondent carrying out the same duties she had before and being paid for them at a rate of £18ph.
- 13 Over the next few months she increased her hours from 20 hours in December 2015 to 60 hours in April 2016, and averaged 60 hours per month thereafter. She remained on the First Respondent's PAYE system throughout.
- 14 I did not accept that Mr Hill and Mrs White were unaware that the Claimant had not taken the Rugby College job. They must have known that from the fact that the Claimant was available for the hours she worked.
- 15 This arrangement was never really discussed between the parties. The business failed to recruit a replacement for the Claimant, and she just carried on as she had before. She did not have fixed hours but attended when asked or by mutual agreement. All the equipment she needed was provided to her, and she took no financial risk.
- 16 I accept that during the relevant period the Claimant:-
  - 16.1 Worked for a short period as an employee, for 2 hours a week, for Northamptonshire County Council; and
  - 16.2 Carried out some graphic design work for one of the First Respondent's clients, Mr Bannister, at the request of Mr Hill.

I am however, satisfied that the Claimant was never in business on her own account. She did not advertise, invest in equipment or material, or hold herself out as being generally available for graphic design work.

- 17 When she attended the First Respondent's premises, which is where she did all her work, she would be given a list of jobs and the deadlines for them. I accepted her evidence that she was expected to work through such lists until

they were completed, and there was no option for her to decline any of them. She was not paid per job, but by the hour.

- 18 Whilst the Second Respondent's evidence was to the effect that the Claimant was free to refuse any work she wished to, and there was no expectation that he would offer her work or that she would accept it, I do not accept that this was the reality of the relationship.
- 19 As is clear from the views expressed in the exchanges in October 2015 the Claimant and the Second Respondent were on very good terms. I have no doubt that had either party to the arrangement refused to provide work or to carry it out the other would have been extremely surprised. There was clearly an understanding or expectation that the Respondents would offer the Claimant work on a regular basis, and that she would accept that offer.
- 20 The Claimant and the Respondent discussed this arrangement in late 2017. This was at the Claimant's instigation, because she was unhappy that she was not being paid for holidays. I also accepted her evidence that she had to ask the Second Respondent before she could book a holiday, and was refused permission if Mrs White had already booked the same dates.
- 21 The Second Respondent discussed this matter with his lawyers, received advice, and on 1 January 2018 wrote to the Claimant under the heading " Re Casual Workers contract" and set out what had purportedly been agreed. It made provisions, in summary, as follows:-
  - 21.1 It applied from that date.
  - 21.2 It was expressed not to be an employment contract and to confer no employment rights.
  - 21.3 There was no obligation to provide assignments or to accept them.
  - 21.4 There was no presumption of continuity between assignments
  - 21.5 If the Claimant was offered an assignment she was expected to complete it
  - 21.6 The Claimant was required to work at the Respondent's premises.
  - 21.7 The Claimant would be informed of the hours she would be required to work for an assignment.
  - 21.8 The Claimant would be paid £18ph and all tax and NIC deductions would be made.
  - 21.9 The Claimant would be entitled to 5.6 weeks holiday pay *pro rata*.
  - 21.10 Whilst at work the Claimant would comply with the rules and procedures in the staff handbook.

The Claimant signed a copy of that letter on 26 February 2018.

- 22 I find as a fact that :-
  - 22.1 the purported agreement did not accurately reflect what had been discussed between the Claimant and the Second Respondent, which had been confined to the wish of the Claimant to be paid for holidays.

- 22.2 The Claimant was in a subordinate role at the time that the agreement was presented to her. She did not read the document through, or seek advice before signing it. As far as she was concerned the relationship was to carry on as before, save that she would now be paid for holidays.
- 22.3 The Claimant was never offered 'assignments' but, as before, agreed with the Respondents that she would work on certain dates and be given lists of job to do when she arrived.
- 22.4 The Second Respondent also believed the only change made by this document was for holiday pay.
- 23 Following this, the Claimant continued working exactly as she had before the letter was signed until she informed the Respondents of her pregnancy on 9 March 2018, and went on maternity leave on 26 June 2018.
- 24 In the interim, from 29 March 2018 the Respondents advertised for a,  
"Graphic Designer/Artworker / pre-press Mac Operator ... Part-time leading to full time. Salary to suit experience. ..."
- 25 That position was offered to Ms M Vincent by letter of 11 April 2018 for 20hr pw at £12ph, which she appears to have accepted and started on 17 April 2018. However, by a further letter to Ms Vincent dated 1 May 2018, which she accepted on 30 May 2018, she agreed to purported terms effectively identical to the purported 'Casual Workers contract' signed by the Claimant.

### **The Parties' Submissions**

- 26 I received written and oral submissions on behalf of each of the parties. It is neither necessary nor proportionate to set them out here.

### **The Law**

- 27 I am concerned with whether or not the Claimant was an employee within section 230 employment rights act 1996. I was referred to the following authorities and considered them.
- Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497 (QBD)
- Nethermere (St. Neots) Ltd v Gardiner [1984] ICR 612 (CA)
- Smith v Goodmayes Insulations Ltd (EAT/55/97)
- Byrne Bros (Formwork) Ltd v Baird [2002] ICR 667 (EAT)
- Wilson v Circular Distributors Ltd [2006] IRLR 38 (EAT)
- Autoclenz Ltd v Belcher [2011] ICR 1157 (SC)
- Dakin v Brighton Marina Residential Management Co Ltd (UKEAT/0380/12/SM)
- Pimlico Plumbers Ltd v Smith [2018] ICR 511 (SC)
- Market Investigations Ltd v Minister for Social Security [1969] 2 QB 173
- Reardon Smith Line Ltd v Yngvar Hansen-Tangen [1976] 1 WLR 989
- Massey v Crown Life Insurance Co [1978] 1 WLR 676

Carmichael v National Power plc [1999] 1 WLR 2042

Stevedoring & Haulage Services Ltd v Fuller [2001] IRLR 627

Quashie v Stringfellow Restaurants Ltd [2013] IRLR 99

Matthews v HMRC [2014] STC 297

Arnold v Britton [2015] AC 1619

- 28 I did not find any of the authorities on contractual interpretation in cases not concerned with employment law helpful: *Uber BV & Others v Islam & Others* UKSC 2019/0029, para. 60-64. In that context I also rely on the Judgment in *Uber* at paragraphs 68-88 as providing clarity as to how these issues should be approached, in particular, 'opt-out' agreements.

### **Conclusions**

- 29 In reality the only issue between the parties in the case before me is whether or not there was a mutuality of obligation between the parties.
- 30 I refer to all my above findings of fact and reach the conclusion that there was such a mutuality of obligation. The purported 'Casual Worker contract' did not reflect the long established reality.
- 31 The Claimant and the Respondents both conducted themselves on the basis that if the First Respondent had suitable work for the Claimant it would be offered to her and she was expected to and did accept it.
- 32 The Claimant has satisfied me, on the balance of probabilities that she was throughout, an employee of the First Respondent.

25/02/2021

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Employment Judge Kurrein

Sent to the parties and

entered in the Register on : :

22 March 2021 J Moossavi

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For the Tribunal

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