EMPLOYMENT TRIBUNALS

Claimant: **Miss P Pawlicka**

Respondent: **Gregory Park Holdings**
T/A Four Seasons Hotel

Before: Employment Judge Midgley

Appearances
For the Claimant: In person
For the Respondent: Mr B Phelps, Counsel

JUDGMENT having been sent to the parties on 29 January 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issue for determination

1. By a reserved Judgement of 18 November 2020 the Tribunal found that the claimant was a worker but not an employee for the purposes of section 230 ERA 1996. The claimant's claim of unfair dismissal pursuant to sections 94 and 100 ERA 1996 was therefore dismissed as such claims can only be pursued by employees.

2. I invited the parties' submissions as to whether the claimant's claim under section 44 ERA 1996 ("the Act") should be stayed, pending any appeal in R (On the Application of the IWUGB) v (1) The Secretary of State for Work and Pensions and (2) The Secrtary of State for BEIS [2020] EWHC 3030 (Admin), or dismissed on the grounds that there was no actionable claim in the law as it stands.

3. In IWUGB, the High Court made a declaration following an application for Judicial Review that the UK Government had failed properly to implement Articles 8(4) and 8(5) of the Framework Directive so as to afford equal protection to limb (b) workers as that afforded by section of the Act to employees against unfair dismissal because they had raised health and safety concerns. The decision of the High Court did not and could not extend the

protection of section 44 of the Act to limb (b) workers, such as the claimant. Only an act of Parliament could achieve that.

4. The parties' submissions were received on 8 December 2020 (respondent) and 9 December 2020 (claimant) respectively. I had regard to the content and argument of those submissions in reaching the decision below. The claimant contended the claim should be permitted to proceed, the respondent that it should be dismissed.

Delay in promulgating the reasons

5. Regrettably, despite drafting these reasons on 22 January 2021 and directing that they should be sent with the Judgment, it appears that due to a Tribunal error they were not sent to the parties. When the claimant made a further application for written reasons on 30 January 2022, in conjunction with an application for reconsideration of the Judgment, I reviewed the Tribunal file and could find no record of the reasons, and therefore incorrectly assumed that they had not been prepared and that I must have misunderstood the claimant's application for the reasons detailed in the Tribunal's email to the parties of 22 February 2022.

6. In the process of conducting an email search for the parties' written submissions (detailed in paragraph 3 above) I located the email I had sent on 22 January 2022 attaching these reasons. I can only offer my sincere apologies to the parties for the errors that have delayed the reasons. I have reviewed the reasons today and they do not change, although I have changed the tense of the verbs to reflect the fact that the reasons applied in January 2021 when the Judgment was sent to the parties, rather than being made in the present.

Conclusions

7. I concluded that the respondent's argument should be preferred for the following reasons: first, the case must be decided in accordance with the law as it is. The current law does not permit a worker within the definition in section 230(3)(b) ERA 1996 to bring a claim pursuant to section 44 of the Act; that was not the effect of the decision in IWUGB. As at the date of the Judgment, there was no indication that an appeal had been lodged against that decision or that the UK Government was proposing to extend the scope of s.44 of the Act through a statutory instrument amending it. To date there has been no such change.

8. Secondly, there must be finality in litigation (Flint v Eastern Electricity Board [1975] ICR 395 at 404, per Phillips J). Finality enables the parties and the Tribunal to comply with the overriding objective by avoiding delay. Here, if there were to be an appeal, there would be considerable delay before the outcome of that appeal were known. Such a delay would not be consistent with the overriding objective nor with the obligation to ensure finality in litigation. In that context, I accept Mr Phelps's argument that the case presented in the administrative court did not rely upon the principles of interpretive obligation. Permission would therefore be needed for such an argument to be run in the

appeal, and there is no certainty that it would be granted. If it were, it would be likely to cause further delay to the outcome of the case.

9. For those reasons the claimant's claim under section 44 ERA 1996 must fail and it is dismissed.

Employment Judge Midgley
Date: 10 March 2022

Reasons sent to the Parties: 11 March 2022

FOR THE TRIBUNAL OFFICE