



# EMPLOYMENT TRIBUNALS

## Claimant

Mr S Brennan and Ors.

v

## Respondent

Regent Family Office Limited

**Heard at:** Bury St Edmund (by CVP)

**On:** 21 March 2022

**Before:** Employment Judge K J Palmer (sitting alone)

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms B Herbert, Consultant

## JUDGMENT

### Pursuant to an Open Preliminary Hearing

It is the Judgment of this Tribunal that at the material time between 2017 and 2020, the Claimant was an employee of the Respondent.

## REASONS

1. This matter came before me today pursuant to a Preliminary Hearing that took place before Employment Judge Lewis in August of 2021. At that Hearing Employment Judge Lewis identified a number of issues in respect of the claims in this matter, in respect of which there are a number of Claimants.
2. The matter before me is one of those issues listed which is to deal with one of the Claimants; a Mr Brennan. This is the Preliminary Hearing held on an open basis by Cloud Video Platform (CVP) to determine the issue of Mr Brennan's status. That is whether he is for the material time in which his claims are significant, an employee, a worker or self-employed.
3. Mr Brennan argues that he is an employee and the Respondent argues that he was a genuinely self employed individual.

4. I had before me a Bundle running to some 237 pages and Mr Brennan had also produced a short Witness Statement which was in the Bundle and I also had before me a Ms Paris Patel who is Chief Financial Officer of the Respondent who had produced a Witness Statement that was also in the Bundle.
5. In essence, the Claimant Mr Brennan, who for the purposes of this Judgment I will simply refer to as the Claimant, pursues a number of claims before this Tribunal and it is material to those claims to ascertain the status of Mr Brennan between the period of time within which he was engaged by the Respondent, that being between 2017 and 2020 when he was told he was no longer required.
6. I heard evidence from Mr Brennan and submissions from Mr Brennan and the Respondents are represented by Ms Herbert who is a Consultant.
7. I was not addressed on the possibility that Mr Brennan might be a worker, simply on the basis that he was either an employee or self-employed.

## **THE LAW**

8. In recent years there has been a plethora of new Authority on the question of status and for the purposes of this Hearing it is important to consider that there are essentially three different types of status for someone engaged in the workplace. That is employee, worker or self employed contractor. The significance of these differences are paramount.
9. If the Claimant was an employee then he can pursue all of the claims he seeks to pursue in this claim. It is worth me mentioning that the other Claimants in this action have all been accepted by the Respondents as employees.
10. The key Section to deal with this issue is Section 230 of the Employment Rights Act 1996 ("ERA") and this defines employees as follows:

230 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.
- (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.

- 11. In recent years there have been a number of cases which have looked very closely at the issue of status and probably the two most significant recent cases are the cases of Autoclenz Limited v Belcher and Ors [2011] ICR1157 and a more recent Uber BV and Ors v Aslam and Ors [2021] ICR657.
- 12. These cases do tell us that it is for a Tribunal to determine the true agreement between the parties and this will often have to be gleaned from all the circumstances of the case in which a written agreement is only part. The Tribunal's task is to determine whether the statutory definition of worker and employee is met. The rights are created by legislation, the task is one of statutory interpretation and not contractual interpretation. It is therefore for a Tribunal to assess the true position between the parties irrespective of whether any written agreement was entered into.

#### EMPLOYEE STATUS

- 13. With respect to employee status, the leading case still remains the case of Ready Mixed Concrete v Minister of Pensions and National Insurance [1968] 2QB497. That specifies that there must firstly be personal service and secondly that there must be a sufficient degree of control to make a servant and master arrangement exist. There must be a wage or other kind of remuneration. There must also be an irreducible minimum of obligation on each side to create a contract of service. The employer must be obliged to provide work and the employee to accept it when it is provided.

#### WORKER STATUS

- 14. In terms of worker status an individual is a worker where they are engaged under a contract and they perform the work personally and the Respondent is not a client or customer of the Claimant's business. There are a number of other authorities on this question which I have considered.
- 15. Essentially that in a nut shell is the legal position and I must then look at the evidence that is before me. I had a limited amount of evidence before me today, but I am grateful to the parties for the evidence that I did have. I am bound to say that the Respondents did not produce an enormous amount

of evidence as to the day to day activities of the Claimant and therefore I am bound to take at face value that which the Claimant told me. I have his statement in front of me.

16. The witness produced by the Respondents, Ms Patel, is essentially a Financial Officer who really was here to give evidence as to the status from a tax point of view of the payments that were made to the various parties. She was able to tell me that with respect to this particular Respondent there were some 12 employee teachers and some two or three self employed teachers of which the Respondents regard Mr Brennan, the Claimant, as being one of those self-employed teachers.
17. When I questioned Ms Patel about the detailed nature of how they worked, not surprisingly she was not particularly au fait with that detail and nor was it put to me that the way in which those individuals were paid, in terms of the salary or the terms of their contracts, had any bearing on the difference between them and the Claimant.
18. In the Bundle, however, I do have a number of contracts of employment and it is on the documents described as self-employed contracts, which I have in front of me in the Bundle, that the Respondents principally rely. They say it is evident on the documentation that the Claimant was a self employed individual and was not an employee. At page 94 of the Bundle I have a document headed 'Agreement' dated 28 September 2017. That is not signed. I have what looks to be an identical document which is signed.
19. In that document I was taken by Ms Herbert to various clauses which are relatively common in such documents. She argued that status can be determined on the basis of the clauses. One such clause states that there is no requirement for the claimant to provide his services personally.
20. I was also taken to clause 5 which tells me that it was the intent of the parties that the Claimant should have the status of a self employed person, and that nothing in the Agreement should render Mr Brennan an employee worker or agent or partner of the College and that he should not hold himself out as such. At 5.2 the document specifies that Mr Brennan shall be responsible for the payment of his own Tax and National Insurance and that he will indemnify the College in that respect. I was also taken to other clauses in the Agreement which specify that Mr Brennan would be entitled to pursue other activities other than those engaged in providing services for the College.
21. It is on the basis of these documents that the Respondents essentially pin their argument. They say that it is clear from the documentation that Mr Brennan signed an agreement which was an agreement that specified he was self-employed, that that was the intention between the parties and that that was the reality of the situation.

22. Mr Brennan's evidence on the other part is that this is not the case. He says he signed what he thought was a standard contract of employment. He agrees that he was sloppy and that he did not read it and therefore to an extent he was somewhat ambushed by its terms albeit he accepted he had signed it.
23. His evidence, however, suggests that the reality of the situation is quite different from that set out in the contract. He deals with this in his statement and I was able also to glean further evidence from him, both under cross examination by Ms Herbert and in respect of questions I put to him. Essentially, he says he operated much in the same way as all the other teachers. It is clear he was not paid PAYE, although in his evidence he argues that he was not aware of that until recently. It may be a little difficult to understand how he drew that conclusion because it is fairly plain on the documents in front of me that he raised invoices that were paid by the College. Nevertheless, it is clear that Tax and National Insurance was not deducted.
24. He said that in all other respects he pursued a role that was equivalent to, or the same as, those other teachers who are now being accepted as employees. He said he used College space, he came to the College, he used a classroom to deliver his teaching, that he was under the authority of the College and they had the authority to tell him the work to do and how to perform the work. He said he was working as part of a team; therefore integration was present and he worked exclusively for the College. His timetable would not permit him to do other work and that he was provided with all the tools of his job, essentially text books, computers and other materials were all supplied.
25. It was not disputed by the Respondents that he went into the classroom and used a College computer for the purposes of teaching Sociology, Psychology and Business. I heard that he taught a mix of GCSE and 'A' Level, although principally the module that he was teaching was an 'A' Level module.
26. The Claimant said he was also required to attend staff meetings and expected to undertake the same duties as other staff such as writing and marking progress texts and mocks and required to submit monthly timesheets to payroll. He said he was invited to College outings such as Christmas events and other outings with the other teachers. Essentially he was performing under the authority of the College and he was providing his services personally.
27. When I questioned him about that, he said that he accepted that the contract that was now before me indicated that he could provide a substitute if he wished to do so. The reality of the situation is that it was never intended that he do so and certainly the reality was that he never in fact did so. He only ever performed the services himself and when he was sick he would rearrange for those classes to be given at a time when he was well enough to do them. He accepted that he was not in receipt of holiday pay or sick

pay, but said that was a misunderstanding on his part as he believed that that was something that just went with a part time employment relationship.

28. The Respondents rely principally on the documents. Therefore it is for me to determine whether I think the documents reflect the true position between the parties. It must be remembered that I can only make a determination on this based on the evidence that has been put before me today. The Respondents produced scant evidence on the activities of the Claimant other than the evidence of Ms Patel which relates principally to the method of payment of the Claimant.
29. Turning to that, it is clear that the Claimant was not subject to deduction of Tax and National Insurance, but I had no evidence before me as to how others were treated and in fact, when I asked if there was evidence as to whether the other teachers were paid by salary or whether they were paid on their hourly rate, that was not something the Respondents were able to answer.
30. It is clear that the Claimant was not paid subject to PAYE, but that is not of itself determinative of his status. There are many instances where the true reality of an arrangement between parties is that of employee where on the face of it an employee is paid without deduction of Tax and National Insurance. That is not uncommon. It is therefore one thing that I must take into account, but it is not a determinative factor.

## **CONCLUSIONS**

31. Looking at all the evidence in the round, I am bound on balance to accept the evidence of the Claimant. I therefore consider that it is very clear that the services that the Claimant was providing were services under a contract and that they were services to be performed personally irrespective of the contents of that contract.
32. Therefore, very clearly the Claimant has got over the line to prove that he is more than a self employed individual and that he is a worker.
33. The question is whether I determine that at the material time to his claim, he was rather more than that and he satisfy the definition as I set out to be an employee.
34. On balance I conclude that he was an employee.
35. I accept his evidence as to the level of control of the Respondents. They had authority to set the work that he did. He taught a particular module to a particular group of students. He was part of a team. He used College space. He came into the College and used College computers. He used College books. He was treated to all intents and purposes whilst on the College premises as any other teacher was treated.

36. Therefore, on the balance of the evidence in front of me, I conclude that the Claimant has convinced me that he has satisfied the tests as set out under s.230 ERA 1996 and I have applied the tests in the Ready Mix case and I come to the conclusion that the Claimant is therefore an employee at the material time.

31 March 2022

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Employment Judge K J Palmer

Sent to the parties on: ....9.4.2022.....

.....GDJ.....  
For the Tribunal Office