



# EMPLOYMENT TRIBUNALS

**Claimant:**  
**Mr D Hughes**

**Respondent:**  
**Benson**  
**Viscometers**  
**Ltd**

**Heard at:**                   **Wales CVP**                   **On: 9<sup>th</sup> May 2022**

**Before:**                   **Employment Judge A Frazer (sitting alone)**

**Representation:**

Claimant:  
In person

Respondent:  
Mr O Lawrence  
(Counsel)

## JUDGMENT AND REASONS

### JUDGMENT

The Claimant's claims for age discrimination, notice pay, holiday pay and unpaid wages are dismissed on the basis that the Tribunal does not have jurisdiction to hear them because it is found that he was neither a worker nor an employee of the Respondent.

### REASONS

#### Introduction

1. This is a claim for wrongful dismissal, age discrimination, outstanding holiday pay and unpaid wages brought by the Claimant, Mr David Hughes, by way of a claim form presented on 6<sup>th</sup> October 2021 against the Respondent, Benson Viscometers Ltd. The Claimant had a claim for unfair dismissal which was dismissed upon withdrawal by EJ Harfield on 4<sup>th</sup> February 2022 on the basis that he did not have the requisite two years' qualifying service.
2. An early conciliation notification was made on 3<sup>rd</sup> October 2021 and the early conciliation certificate was issued on 6<sup>th</sup> October 2021. The Respondent entered a response denying the claims on the basis that the Claimant was neither an employee nor a worker, having provided services through a limited company via an agency. As such there was no contract between the parties. At paragraph 2 of a case management order dated 4<sup>th</sup> February 2022 EJ Harfield listed the case for a public preliminary hearing for the determination of the following issues:
  - a) Whether the complaints of failure to pay notice pay and failure to pay expenses (breach of contract) should be dismissed because the claimant is not entitled to bring it if they were not an employee of the respondent as defined in section 230(1) and (2) Employment Rights Act 1996/Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994;
  - b) Whether the complaints of failure to pay holiday pay and arrears of pay should be dismissed because the claimant is not entitled to bring it if they were not an employee or a worker if the respondent as defined in sections 230(1), (2) and (3) of the Employment Rights Act 1996/ Regulation 2 of the Working Time Regulations;
  - c) Whether the complaints of age discrimination contrary to the Equality Act 2010 should be dismissed because the claimant is not entitled to bring it if they were not within the 'employment' of the respondent as defined in section 83 of the Equality Act;
  - d) To make further case management orders as appropriate.

## **The Hearing**

### **Documents**

3. I had before me a bundle of documents running to 952 pages and a Suggested Reading List from the Respondents' Counsel, Mr Lawrence, which included reference to the authorities that he was relying on together with paragraph numbers for the relevant passages. I had five witness statements

from the Claimant, a witness statement from Lorna Chun of the Respondent, a witness statement from Craig Bridgland of STR Ltd and a witness statement from Emma Rees also of STR Ltd. I had a skeleton argument from the Claimant and the case of **Uber BV and others v Aslam and others [2018] EWCA Civ 2748**. For and on behalf of the Respondent I was provided with copies the following authorities: **James v Greenwich UKEAT/ 0006/06/ZT; Dynasystems for Trade and General Consulting Ltd and Others v Mr M Moseley UKEAT/ 0161/ 15/DA ; ESS Support Services LLP v Mr K Pabani Compass Group Plc UKEAT/ 0161/15/ DA; Tilston v Alstom [2010] EWCA Civ 1308 and Smith v Carillion (JM) Ltd [2015] EWCA Civ 209.**

## The Hearing

4. I adjourned for reading until 1130 and asked the parties whether there was anything that they wanted me to read. Mr Lawrence had provided me with a suggested reading list and the Claimant drew my attention to pages 352 and 52. I heard from the Claimant at 1132. He confirmed that his five witness statements contained his evidence-in-chief. He was cross-examined by Mr Lawrence under oath. At the start of questioning the Claimant was asked to look at a document in the bundle. The Claimant appeared to have problems loading the document or being able to see it on his device. He did not have a hard copy of the bundle in front of him. I asked him if he had a second device and he said that he did so I adjourned briefly to allow him to have the documents bundle on his second device. The questioning proceeded with the Claimant providing answers but around 1215 he had problems with the bundle loading on his device. I therefore allowed him a further five minutes to rectify this. The questioning then proceeded. At 1400 I heard evidence from Mr Craig Bridgland who confirmed his witness statement as his evidence-in-chief under affirmation. He was questioned by the Claimant. At 1436 I heard evidence from Emma Rees who confirmed her witness statement as her evidence-in-chief under affirmation. She was questioned by the Claimant. At 1442 I heard from Lorna Chun of the Respondent under oath who confirmed her witness statement as her evidence-in-chief. I had a short break between evidence and submissions. I heard oral submissions from Mr Lawrence and then from Mr Hughes. I then reserved my decision as the case had come to an end at 1541.

## Submissions

### Respondent's Submissions

5. I was referred to paragraph 58 of **James v Greenwich** which provides that where contractual arrangements are genuine and when implemented

accurately represented the actual relationship between the parties – the EAT suspected that it would be a rare case where there would be any evidence which entitled the Tribunal to imply a contract between the worker and end user and that if the relationship were to be inferred there would have to be subsequent to the relationship commencing some words or conduct which entitled the Tribunal to conclude that the agency arrangements no longer dictated or adequately reflected how the work was being performed and that the reality of the relationship was consistent with implication of the contract. The Respondent paid Blackfields who paid either Liquid Friday or David Hughes company. The agency was the intermediary. It was submitted that the court needed to be satisfied that the situation on the ground deviated so much that those arrangements did not apply. It was submitted that there was no evidence to make this finding. The Respondent at some point was seeking a permanent quality manager. Their approach changed. They tried to fill the position with a contractor.

6. At paragraph 21 of **Dynasystems for Trade and General Consulting Ltd and Others v Mr M Moseley** the EAT referred to the necessity test as concerned implication of contract. At paragraph 44 of **Tilston v Alstom** it was held that even if there is a significant degree of integration of the worker into the organisation it was not inconsistent with the existence of an agency relationship. It was submitted that even if the Claimant were integrated into the Respondent's organisation or subject to its control this would not serve to vitiate the agency agreement. One of the services that he was to provide as per the contract was to support the General Manager. At paragraph 22 of **Smith v Carillion** it was held that it was not against public policy for a contractor to obtain services by this sort of relationship even where the purpose was to avoid legal obligations which would otherwise arise were the workers directly employed.
7. Mr Lawrence submitted that this was a clear cut umbrella contract. The Claimant was neither a worker nor an employee. The contract was between Blackfields and a limited company which provided for a right of substitution. It was not a contract to perform work personally. The Claimant accepted during cross-examination that the money that the Claimant received in business revenue was not employee income as there would be completely different tax consequences. Money passed in gross form and Liquid Friday or the Claimant's company would make deductions. The Claimant's case was that since the Respondent was sourcing for a permanent post he was under the impression that this was the agreement for the whole duration. However he said that he knew that the post was not permanent and in emails referred to a six months contract. It was submitted that that evidence was contradictory and unreliable. Communication about starting times came from Blackfields. The termination was delivered to Blackfields and not to the Claimant directly which

showed what the Respondent understood the arrangement to be. There was no contract between the Claimant and the Respondent and he was neither a worker nor an employee. The **Uber v Aslam** authority dealt with the issue of worker status and is compatible with the case law on agency. The Supreme Court were not dealing with an agency situation.

### Claimant's Submissions

8. The Claimant submitted that he was involved in similar case in 2017 in front of EJ Jones who ruled that he was a worker (**Hughes v Gosei UK Ltd 1800199/2017**). The case was in the bundle but there is no reasoned decision on employment status available. I checked on the employment tribunal website under that case number but could only locate the decision of EJ Jones which struck out the claim on the basis of non-compliance with s.18A Employment Tribunals Act 1996. The Claimant also submitted that **Aslam v Uber** was relevant in that the Supreme Court held that the contract should not be viewed as critical to the reality of the situation. The holistic context had to be considered. The Respondent was sourcing a full-time permanent manager for the company and the Claimant stated that he had the qualifications to succeed in that post. The post was for a full-time permanent Quality Manager 40 hours a week, 9 to 5 Monday to Friday.
9. The Claimant submitted that the Tribunal has to have regard to the elements of an employment relationship namely mutuality of obligation, personal service, control and integration. The Respondent was looking for a permanent Quality Manager. The main problem was the distance. For that reason the pay and other elements had to be kept on a fluid basis. There had been an initial agreement that a contractual framework would be ideal as it would allow the Claimant to be funded every week and he would be able to use his expenses to fund the travel. Therefore the parties entered into an agreement where the Claimant was working permanent full time and yet the contractual documentation was not the final arrangement.
10. The Claimant submitted that there was mutuality of obligation in that the Respondent had to pay him and provide him with work. He had to provide his work to the Respondent. He submitted that he could only provide work personally. In reality he was unable to replace himself as no-one would have the same qualifications as him.
11. The Claimant submitted that Ms Chun exercised complete control over him. She wanted to know whether he had accommodation. She stated that the Claimant was unable to extract himself from working Monday to Friday 9 to 5. He was training employees. He was creating documentation and quality

manuals. He was given an email address. He used the company's computer. He was integrated into the organisation and under the Respondent's control.

12. The reality was that the Respondent wanted a permanent individual and a guarantee that the Claimant was to stay for the long run. The objectives were to be delivered over a two to three-year period. The contracts and the set up with the agency was simply an emergency procedure because of the high costs that would have been incurred in the Claimant relocating. The reality of the situation was that this was a full-time permanent post and that the Claimant was an employee of the Respondent.

## The Law

13. The issue in this case is whether the Claimant was an employee or a worker and specifically whether there was a contract between him and the Respondent. For the purposes of the Employment Rights Act 1996 the definitions of employee and worker are set out 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.*

In respect of the claim of age discrimination the relevant employment status clause is set out at s.83(2)(a) of the Equality Act 2010 which provides that 'employment' means 'a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.'

Under the Working Time Regulations 1998 the definition of worker is '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.’*

14. The specific issue in this case is whether there is a contract as between worker and end user where there is a contract between a limited company and the agency for the provision of services of the worker to an end user. The authorities deal with the specific issue of whether or not there is a contract for the purposes of the statutory definitions.
15. The test for an employment contract was originally set out by McKenna J in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2QB 497** which was that 1) there was to be some personal service in consideration of remuneration; 2) that there was to be a sufficient degree of control in the relationship and 3) that the other provisions of the contract were consistent with a contract of service.
16. In **Autoclenz Ltd v Belcher and others [2011] IRLR 820** (SC) the Supreme Court held – when considering the issue of artificiality of substitution clauses – that a finding that a contract is in part a sham does not require a finding that both parties intended to paint a false picture as to the true nature of their respective obligations. The question in every case is what is the true agreement between the parties.
17. In **James v Greenwich Council** the EAT considered whether there was an implied contract between an agency worker and the end user. It was considered that a contract could only be implied if it was necessary to do so. At paragraphs 58 the EAT concluded as follows:

*58. When the arrangements are genuine and when implemented accurately represented the actual relationship between the parties – as is likely to be the case where there is no pre-existing contract between worker and end user – then we suspect that it will be a rare case where there will be evidence entitling the Tribunal to imply a contract between the worker and end user. If such a contract is to be inferred, there must be subsequent to the relationship commencing some words or conduct which entitle the Tribunal to conclude that the agency arrangements no longer dictate or adequately reflect how the work is actually being performed, and the reality of the relationship is only consistent with the implication of the contract. It will be necessary to show that the worker is*

*working not pursuant to the agency arrangements but because of mutual obligations binding worker and end user which are incompatible with those arrangements.'*

18. Whether or not 'integration into the organisation' was inconsistent with an agency relationship in which there was no contract between worker and end user was considered by Elias LJ sitting in the Court of Appeal in **Tilson v Alstom Transport** at paragraph 44:

*'...the mere fact that there is a significant degree of integration of the worker into the organisation is not at all inconsistent with the existence of an agency relationship in which there is no contract between worker and end user. Indeed, in most cases it is quite unrealistic for the worker to provide unsatisfactory service to the employer without being integrated into the mainstream business, at least to some degree, and this will inevitably involve control over what is done and, to some extent, the manner in which it is done. The degree of integration may arguably be material to the issue whether, if there is a contract, it is a contract of service. But it is a factor of little, if any, weight when considering whether there is a contract in place at all. This argument repeats the error of asserting that because someone looks and acts like an employee, it follows that in law he must be an employee.'*

19. In **Uber v Aslam** the Supreme Court considered whether or not Uber drivers, whose work was arranged via a smartphone application, worked for Uber under workers' contracts so as to qualify for the national minimum wage, annual leave and other workers' rights or whether they were performing services solely for and under contracts made with passengers through the agency of Uber London. It took a purposive approach and instead of focusing entirely on the contractual documents, considered the nature of the relationship between drivers and Uber. In particular, it considered the subordinate status of drivers and the degree of control exerted by Uber towards the drivers.

## Findings of fact

20. On 20<sup>th</sup> August 2021 Ms Chun contacted the Blackfields trading as STR Ltd ('the agency') to ask for assistance in their search for someone to fill the vacant position of Quality Manager. The company had tried to source someone for the role independently but after no success had turned to the agency for assistance. Ms Chun's intention was to recruit an employee. Having regard to the document at page 49 the search was in fact for an employee as there is reference to salary, pension and holiday. The terms that were communicated to the agency as confirmed in the email from Craig Bridgland were '*base salary £45, 000, pension 2% employee and 3% employer, 28 days holiday, working from home in first 6 – 12 months and no bonus.*'



21. Ms Chun sent to Mr Bridgland the document at pp49 to 55 of the bundle which was the copy of the job description created for the Quality Manager who had just left. This was then sent to the Claimant.
22. On 2<sup>nd</sup> September 2021 Mr Bridgland emailed to Ms Chun a pro forma which is at p.67 which set out information in respect of the Claimant as a candidate. Where it says 'limited, umbrella/ PAYE it was recorded 'limited' and the day rates were set out as £400 to £550 per day. It also stated '*the Claimant is currently based in Coventry, will stay away in rented accommodation and will also look at relocating as loves the location. Is willing to relocate to Haverfordwest.*' Mr Bridgland also emailed Ms Chun the Claimant's CV. That information set out the expectation that the ensuing contract between the agency and the Claimant was to be via a limited company.
23. Also on 2<sup>nd</sup> September 2021 Mr Bridgland sent an email to Ms Chun referring the Claimant. It said, '*he would also consider permanent however would look at £60,000 minimum. Think if you move forward with the contract it could be try before you buy potentially.*'
24. On 6<sup>th</sup> September the Claimant emailed Mr Bridgland providing his travelling costs and indicating that the drive from Coventry to Milford Haven was four hours. He stated that the salary on offer of £50,000 was not sufficient. The Claimant added to the bottom of that email '*a starting 3 months contract and in 2022 we discuss Perm*'. There was no expectation on the Claimant's part at that point in time, in my finding, that the role would be permanent from the start.
25. Ms Chun flagged up some concerns to Mr Bridgland about the Claimant's CV. However she interviewed the Claimant on 7<sup>th</sup> September. During this call the costs of travelling were discussed. The Claimant wanted a higher rate of pay which included expenses, as he had communicated to Mr Bridgland the day before.
26. After the interview Ms Chun communicated with other staff to say that the Claimant was starting with the company on Monday as a 'Quality Consultant'. He was to be set up with an email and a desk. Ms Chun's evidence was that after the interview the Claimant had an introductory call with the owners of the business. Had the Respondent recruited an employee she says that the call would have been a formal interview rather than an informal introduction. There was also no job offer or contract of employment and The Claimant was not given a probationary period. I accepted this evidence as it was consistent with the contractual documentation according to which the assignment was set up. The Claimant commenced his engagement for the Respondent on 13<sup>th</sup> September 2001.

27. At page 56 is a document entitled 'Standard Terms and Conditions of Business for Introducing Candidates for Permanent Employment or Direct Engagements ('Conditions;') which sets out the contract between the agency and the Respondent for the recruitment of staff. Paragraph 1 of that contract is a whole agreement clause and paragraph 2 deems there to be agreement without signature upon a number of conditions being met which include the end user issuing them with a requirement, the introduction or engagement of a candidate taking place or iii) the end user passing information about a candidate to a third party.
28. At 1549 on 10<sup>th</sup> September 2021 Ms Chun wrote to Mr Bridgland to say that she normally set up health and safety training and an induction for new people and did she need to do this for David? She added 'I never did any training as a consultant but am mindful things may have changed.'
29. On 10<sup>th</sup> September 2021 Mr Bridgland wrote to Ms Chun heading the letter 'Re: Contract assignment via STR Ltd t/1 Blackfield Associates ("STR") of a Quality Consultant Contract Ref: 3879'. The Assignment summary was set out as follows and included an anticipated start and end date:

*Contractor: Liquid Friday Limited via STR*  
*Consultant: David Llewelyn-Baldwin Hughes*  
*Job Title: Quality Consultant*  
*Start date: 13/09/2021*  
*Anticipated End Date: 13/06/2022*  
*Reporting to: Lorna Chun*  
*Charge Rate: Rate per hour of £70.59*

30. Mr Bridgland sought to set up the Claimant for payment but he was unable to provide details of a business bank account to the agency. Therefore he set up an umbrella contract for him using the company as Liquid Friday Ltd. There is a letter at page 715 from Mr Bridgland to the Respondent which has the Claimant's name c/o Liquid Friday Limited and his address and is headed 'Umbrella Contract'. The contract is set out at p.716 and shows that the contracting parties. 'The Client' is the Respondent. 'The Contractor' is Liquid Friday Ltd, 'The Contractor's Named Consultant' is the Claimant. The agreement is between STR Limited ('the agency') and Liquid Friday Ltd. It was agreed that '*The Contractor shall provide the Services for the Client in accordance with the terms of this Agreement which is a contract for services; and certain terms in this Agreement will or will not apply depending on whether the Conduct Regulations apply and Clause 11 sets out the details of this.*'

31. At paragraph 4 of that contract it is stated: *'For the avoidance of doubt, this Agreement constitutes a contract for services and not a contract for employment between STR (or the Client) and the Contractor (or the Consultant). The parties acknowledge that neither the Contractor nor the Consultant is the employee, worker, agent, partner or servant of STR (or the Client).'* The paragraph then sets out the obligations of the Contractor. At paragraph 8.3 there is a provision which permits the Contractor to offer a suitable replacement consultant. The agreement is signed on behalf of STR and by Liquid Friday Limited.
32. On 24<sup>th</sup> September 2021 Mr Bridgland received the limited company information from the Claimant in respect of his company *'David L B Hughes Quality and Certification Experts Limited'*. Mr Bridgland then wrote to Ms Chun to say *'I am pleased to confirm that David Llewelyn-Baldwin Hughes has accepted your offer as a contract Quality Consultant for the above role, for which I attach our Assignment Schedule herewith. The Assignment is subject to our agreed Terms of Business'*. Accordingly, the Assignment Summary was the same as that provided in the letter of 10<sup>th</sup> September 2021 save that the contractor was no longer 'Liquid Friday' but was instead 'David L B Hughes Quality and Certification Experts Limited via STR'.
33. The full Assignment Schedule is at page 285 and is signed on behalf of the agency and the Respondent. The Particulars of Assignment are recorded as *'The Consultant, David Llewelyn- Baldwin Hughes providing consultancy services as a Quality Consultant via David L B Hughes Quality and Certification Experts Limited'*.
34. The Claimant was required to fill in timesheets and have them counter-signed by the Respondent on a weekly basis which were then passed on to the agency for payment to be made. The agency invoiced the Respondent in relation to the timesheets submitted. The invoice for the week ending 19<sup>th</sup> September 2021 is at p.237 and the corresponding timesheet completed by the Claimant is at p.238. This shows that the Claimant was engaged as a 'Quality Consultant' and that the contractor name was 'David Llewelyn-Baldwin Hughes c/o Liquid Friday Ltd.' There is a timesheet that was filled out on 17<sup>th</sup> September 2021 at p.238 which is signed by both Mr Hughes and Ms Chun that day and which details hours worked as 37 hours.
35. At page 697 there is a letter to the Claimant dated 24<sup>th</sup> September 2021 which is entitled 'Our ref: Quality Consultant – Benson Viscometers Ltd contract reference number 3879'. There was a request to read the assignment schedule and contract agreement carefully and a request for information about the Claimant's company. The Claimant was invited to obtain insurance through the agency's insurance partner if he didn't have it already. The assignment

schedule is at page 698 and at page 708 the document is signed by STR but not by the Claimant. At p.703 clause 4 there is stated: Contractor's Status ..... The Claimant signed the backsheet of the document at page 712 and this was countersigned by STR.

36. At page 317 there is a document entitled 'Contract ref 3879' and 'assignment schedule'. It prescribes a notice period of 4 weeks, an hourly rate of £70.59 to be paid monthly on a 40 hour per week basis. The 'Contractor' is referred to as 'David L B Hughes Quality and Certification Experts Limited' and the consultant is David Hughes. This was signed by STR and Benson Viscometers Ltd.
37. The Claimant only provided work for the Respondent for 17 days. On 30<sup>th</sup> September 2021 Ms Chun wrote to Mr Bridgland to say that the company had felt misled by him and what he claimed to be able to do. The complaint was that the company had had numerous issues with the Claimant including him going home early, taking extended lunch breaks, not following instructions and upsetting staff. The instruction from Ms Chun was to remove the Claimant from the business at the earliest opportunity and preferably that day.
38. Accordingly on 30<sup>th</sup> September Mr Bridgland wrote to the Claimant and asked him to leave site at 2pm. The Respondent stated that they believed him to be in breach of his terms with Blackfield Associates ('the agency') and stated that they were terminating him with immediate effect. He was told to come back to Mr Bridgland if he believed that the evidence provided was not a true reflection of the way in which he had been conducting himself or carrying out his services (p.334).
39. On 4<sup>th</sup> October at 1234 Ms Rees of STR Group emailed the Claimant to say that she would review all of his correspondence and she requested him to liaise with her directly (p.350). He was asked to refrain from contacting the Respondent. The response to this from the Claimant was that he was suing Lorna Chun for emotional distress for 'weeks of lies belittling bullying in place of work as well as obstructing delivery of ISO13485 Certification in the company. He said 'I note to you I am in Coventry waiting for a signal to either go back to work or to stay in Coventry.'

## Conclusions

40. The Claimant's contention has been that the reality of the agreement was that the Claimant was recruited as a Quality Manager and in effect he was an employee. He says that this was the intention as expressed by Ms Chun and it carried on from there. He was waiting for the Respondent to issue him with a contract of employment and the current contractual documentation was merely temporary. He says that there was a significant degree of control by the

Respondent. He worked a full week and had his own email address. He was under the direction of Ms Chun and in all appearances was an employee of the business, which is what the parties had intended. He says that this was the reality of the agreement and the contractual mechanism did not reflect the true intention of the parties.

41. The Respondent, on the other hand, submits that there is no need for the Tribunal to imply a contract as between the Claimant and the end user. The contract was between a limited company and the agency as the contracting parties to provide the services of the Claimant. There was then an agreement between the agency and the Respondent. The Claimant was paid in gross and was responsible for his own tax and national insurance. He submitted timesheets which were addressed to his company and signed by himself and the employer so that the agency could make payment. The contractual arrangements as set out in the documentation provided reflected the agreement in full and there was no need to go behind this.
42. I find that the Claimant was neither an employee nor a worker of the Respondent as he did not have a contract with the Respondent. The contractual documentation is clear and provides that there was initially an agreement between Liquid Friday and the agency and latterly between the Claimant's incorporated company and the agency. There was no contract between the Claimant or his company and the Respondent. While Ms Chun was in fact hoping to source an employee she did in fact engage in the agreement for a contractor with the agency. It was for a finite term. I find that this was consistent with her aspirations that this was not a long-term plan and this is reflected in the finite term in the Assignment Schedule. She conducted herself consistently with this being a contract for a consultant and not an employee in that she did not send out an offer letter or engage the Claimant on a probationary period. She also introduced the Claimant to others as the Quality Consultant.
43. The Claimant was integrated into the organisation to some extent. He was to report to Ms Chun, he had a desk, he had an email and he worked the equivalent of full-time hours. However I have taken into account the dicta in **Tilson v Alstom Transport** that *'the mere fact that there is a significant degree of integration of the worker into the organisation is not at all inconsistent with the existence of an agency relationship in which there is no contract between worker and end user'*.
44. I find that the Claimant was aware that he was entering into a contract for services via a limited company. He consented to this. The impetus for the parties' decision to contract on this basis was because the Claimant was seeking to be adequately recompensed for his travelling costs. However this does not make the contract a sham. While he may have been of the impression

at the start of his conversations with the agency that the Respondent was looking for a full-time permanent employee – indeed it was - the situation changed by the time he signed up with the agency. It was clear that this was not going to be an employment relationship but an assignment. There was no contractual relationship between himself and the Respondent. He engaged fully in completing the documentation. He was given timesheets headed with the name of his limited company. He was paid gross as his company would be responsible for the tax on those payments. He was aware that this was not an employment relationship but an agency relationship via a limited company. I did consider his submissions regarding the **Uber** case but the material difference which distinguishes that case on its facts and this case is that there were contracts between Uber and the drivers. Here there was no contract between the Respondent and the Claimant. I was unable to rely on the Claimant's cited tribunal case as this dealt with jurisdiction.

45. I have considered all the circumstances in this case and in particular whether there is any need for me to imply a contract between the Claimant and the Respondent. I conclude that there is not. The documentation adequately reflected the arrangements between the parties. The parties worked in accordance with those arrangements and so the arrangements adequately governed the practical realities of the situation. While the Claimant may have had some expectation that he would become an employee in the future the reality of the arrangement when the parties entered into it was that he was engaged via a limited company through an agency. The Claimant takes issue with the substitution clause and says that in reality this would not happen because the Respondent was reliant on his expertise. However the clause is there and it is signed up to and there was nothing before me to suggest that this was not exercisable in practice. This was a genuine agreement between the parties that worked on the ground. I conclude therefore that the Claimant was neither a worker nor an employee and his claims are dismissed.

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Employment Judge A Frazer  
Dated: 2<sup>nd</sup> June 2022

JUDGMENT REASONS SENT TO THE PARTIES ON 8 June 2022

FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS Mr N Roche