EMPLOYMENT TRIBUNALS

Claimant: **Belize Harrison**

First Respondent: Lloyds Bank plc

Second Respondent: Declan Marriot

Heard at: Leeds on 5 August 2022 by CVP

Before: **Employment Judge Shepherd**

Appearances:
For the claimant: Mr Caiden, counsel
For the respondent: Mr Welch, counsel

RESERVED JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that:

The claimant was not employed by the first respondent within the meaning of section 230 of the Employment Rights Act 1996.

REASONS

1. This Preliminary Hearing was listed following a Preliminary Hearing for case management and before Employment Jones on 26 April 2022. It was listed to consider whether the claimant was a disabled person and also the issue of whether the claimant was an employee of the first respondent pursuant to section 230(1) of the Employment Rights Act 1996. If not, whether she was an employee of Alexander Mann–Solutions Ltd or Giant Precision Services Ltd.

2. The respondents have accepted that the claimant is a disabled person within the meaning of the Equality Act 2010 and have also accepted that the claimant was a contract worker pursuant to section 41 of the Equality Act and a worker pursuant to section 230(3)(b) of the Employment Rights Act 1996.

3. The final hearing is listed for a six-day hearing commencing on 1 February 2023. The only live issue for this Preliminary Hearing is whether the claimant was an employee of the first respondent pursuant to section 230(1).

4. I heard evidence from:
Belize Harrison, the claimant;
Mark Tolladay, manager, Complaint, Disputes and Litigation department;
Declan Marriott, the second respondent.

5. I had sight of a bundle of documents which was numbered up to page 716. I considered those documents to which I was referred by the parties. I received skeleton arguments from both parties together with oral closing submissions. There was insufficient time for me to provide an extempore judgment.

Background information/facts

6. The claimant had previously worked for the first respondent between April 2014 and September 2016. She left and completed her pupillage with a set of barristers' chambers.

7. In November 2017 the claimant had discussions with Christopher Beaven, a Senior manager with the first respondent. She was offered work within the Complaints, Disputes and Litigation (CDL) programme. The second respondent, who was employed by the first respondent, and had responsibility for the CDL programme, said that this programme was predominantly covered by contractors. There were 6-7 permanent employees and 60 – 70 contractors. This was said to be a remediation programme and it was always intended to have a limited shelf life.

8. The claimant worked at the first respondent as a Head of Quality and Specialist Advisory.

9. The claimant was informed that the contract was a six-month contract and in an exchange of emails she was told that all was approved and, as soon as Allegis uploaded the data, Mark Tolladay would guide the claimant through “on boarding”.

10. Mark Tolladay told the claimant that he had uploaded the role into the Allegis system and asked the claimant to provide a copy of her CV to speed things up. Mark Tolladay said that the claimant was introduced to him as a contractor and that the claimant was aware of the nature of her engagement and had been informed that there was no guarantee of renewal.

11. The claimant was paid by Allegis. Her pay slips included PAYE deductions and holiday pay and her department was identified as “Lloyds Contractors”.

12. In 2019 the first respondent changed its supplier of contractor resources. On. 8 February 2019 an email was sent to the claimant from Allegis Global Solutions. This was headed “Contingent Working Solutions – Confirmation of Change of Services”. It was indicated that the first respondent was changing the way it managed the contractor resources in its UK business. It was stated that Alexander Mann Solutions (AMS) would contact the claimant to discuss entering into a new contract for the continuation of her assignment at the first respondent.

13. The agreement between the first respondent and AMS was that contractors would be provided to the first respondent by approved subcontractors which included Giant Precision Services. The claimant was informed that she was a worker supplied to the first respondent. She was provided with a substantial amount of information with regard to her position as a contractor. The claimant was provided with a written statement of particulars of employment which stated that she was employed by Giant Precision Services Ltd. It was stated that the claimant would provide services to customers of Giant on assignments.

14. The assignment summary, which was to be read in connection with the claimant's Terms and Conditions of Employment and the Employment Handbook, identified the assignment with the customer named as Lloyds Bank plc.

15. The claimant received a welcome letter setting out the benefits that she was entitled to as a Giant employee.

16. The terms and conditions of employment were accepted by the claimant through the online portal.

17. There were express terms of the written terms and conditions of employment. The first respondent had no contractual relationship with the claimant. The claimant's terms and conditions of employment were with Giant Precision Services Ltd and she was engaged by the first respondent as a contractor. The contract included details of the particulars of employment and the claimant's requirement to comply with Giant's rules regulations and policies including such things as holidays, sick pay, grievance and disciplinary procedure.

18. On 26 February 2020 an email was sent to the claimant from AMS with regard to the claimant's application for an assignment at Lloyds Banking Group. Information was requested including confirmation that the claimant understood that, in the event that she was successfully placed with the client, the claimant would be expected to work through their chosen umbrella company provider, Giant. It was specifically stated that the claimant was an employee of Giant and would receive an employment contract from them. The claimant signified her agreement.

Claimant's submissions

19. The claimant's case was that, in effect, she was an employee of the first respondent. The imposition, by the first respondent, of other parties into the chain made no difference to this being the true position. It was said that, in effect, the first respondent was attempting to improperly circumvent rights by this mechanism. It was little more than a 'sham' and did not reflect the true

agreement between the parties and was not, properly speaking, an agency working relationship.

20. Mr. Caiden, on behalf the claimant, submitted that since the Supreme Court cases of **Uber v Aslam [2021] UKSC 5** and **Autoclenz v Belcher [2011] UKSC 41** the approach should be one of statutory interpretation and not analysis of contract documentation.

21. It was submitted that the claimant had to provide personal service to the first respondent. There was no right of substitution. There was mutuality of obligation and a significant degree of control was exercised by the first respondent.

22. The job offer and negotiations took place directly between the claimant and the first respondent. The third party agency was imposed by the first respondent and the claimant had no choice in the identity of the agent. It is entirely at the first respondent's behest and she was also forced to change agencies.

23. It was submitted that claimant was not really undertaking any financial risks and was in the same position as a fixed term employee. She was highly integrated into the first respondent's workforce, given the same equipment and software and included in its structural charts. It was also submitted that the first respondent had raised points which were trying to show the level of integration was different between its accepted employees and the claimant. However, these aspects were slight and merely allowed the first respondent to operate a false labelling approach. The claimant was provided with computers, peripherals and laptops and, when she was working from home the first respondent provided and couriered equipment to be claimant including an orthopaedic chair.

24. Mr. Caiden referred to the case of **James v London Borough of Greenwich [2007] IRLR 168** and **the case of Harlow District Council v O'Mahony UKEAT/0144/07/LA** which he said was factually analogous to the present case. The true position was the claimant was an employee of the first respondent and, if it was necessary to imply a contract of employment between the claimant and the first respondent, this was made out on the facts of this case.

Respondent's submissions

25. Mr. Welch, on behalf of the first respondent, referred to the case of **James v Greenwich** and **Tilson v Alstrom Transport [2017] IRLR169** in which the Court of Appeal confirmed that the crucial test in relation to the end user is whether it is "necessary" to imply a contract of employment in order to explain the relationship of employer and employee. The relationship between the claimant and the first respondent is explained by the express terms and it is not necessary for there to be an implied contract between the claimant on the first respondent.

26. The claimant is an experienced commercial banking professional and a qualified barrister having undertaken a specialist commercial pupillage. She entered into a contract of employment with Giant, in which she agreed to perform services to customers of Giant through assignments. She submitted client timesheets by reference to the number of hours worked on the assignment. She was entitled to statutory employment rights, including holiday entitlement which she received. She accepted the terms and conditions of employment. She agreed to be bound by the Giant Employment Handbook and signed up to the Giant pension plan.

27. Mr. Welch also submitted that it was obvious to the claimant during her time on the assignment with the first respondent that she was not a Lloyds' employee. The email addresses distinguished employees from contractors. The claimant was told she could not receive Lloyd's "value" rewards owing to her status as a contractor rather than an employee. Working structure charts identified the claimant as having contractor rather than employee status and her pay slips clearly indicated that she was a Giant employee.

Conclusions

28. The claimant's case is that **Uber v Aslam** provides that the primary question for the Tribunal is one of statutory interpretation and not contractual interpretation and that must be the starting point. All the cases relied on by the respondent predate that case. It is necessary to consider the reality of the position and all the factors.

29. I have considered all the submissions and authorities referred to even if they are not set out in detail above.

30. I accept that the Supreme Court in the case of **Uber v Aslam** provides that the Tribunal should not merely follow the contractual position in the analysis of employment status and that the reality of the situation should be considered.

31. The claimant gave evidence that she had been told that the agency was merely for payroll and vetting. She said that the position had been misrepresented to her and that she had no choice. I am satisfied that this was not the case. She may not have liked the position but if she wanted to work with Lloyds that was her choice. She had received a substantial amount of documentation and detail identifying her employer as Giant.

32. The evidence of Mark Tolladay was that the claimant understood that she was an employee of Giant Precision Services. The documentary evidence in support of this is clear. The claimant was a qualified barrister and an experienced professional providing commercial advice to the first respondent. The position was explained in numerous documents such as the contractor guidance pack and the employee handbook.

33. This was not a case of the first respondent taking advantage of the unequal bargaining position to interpose a false agency relationship in order to deprive the claimant of her employment rights.

34. There are factors pointing both ways such as the contractual documentation, the claimant's assignment summaries and timesheets, she was paid on a day rate as opposed to a salary pointing towards contract worker status. I accept that there was a degree of control, personal service, and mutuality of obligation between the claimant and the first respondent.

35. I accept the clear and credible evidence of Mark Tolladay and Michael Marriot that the claimant was aware of her position as a contractor and that her wish to be a permanent employee was discussed on numerous occasions.

36. This was a professional relationship and both parties were aware of the express terms and acted in accordance with them for approximately four years.

37. I have considered all the circumstances in order to determine whether the claimant was an employee of the respondent. Both parties understood the position, the claimant was referred to as a contractor. She was recognised for work carried out but was informed that she could not be sent a “valued award” as she was a contractor. There were a number of references (including from the claimant) to the claimant’s role being proposed for ‘insourcing’

38. The reality of the situation was that the claimant knew she was an employee of Giant Precision Services Ltd and accepted a number of assignments to work for the first respondent. I do not accept that the first respondent was attempting to impose labels to deprive the claimant of employment status. The claimant knew the position and it would be artificial to imply or interpret the relationship as one of the claimant being employed by the first respondent.

39. The claimant did not enter into, or work under, a contract of employment with the first respondent.

Employment Judge Shepherd
15 August 2022

Judgment Sent to the Parties On
18 August 2022