



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs S Dillingham**

**v**

**CA Technical Software Limited  
t/a Computer Assistance**

**Heard at:** Reading by CVP

**On:** 6 July 2022 and 7 September 2022

**Before:** Employment Judge S Matthews

**Appearances:**

**For the Claimant:** Mr Parry (Solicitor)

**For the Respondent:** Mr Moroney (Director)

**JUDGMENT** having been sent to the parties on 7 September 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant was employed by the respondent, a company that provides IT support, repairs and website designs as a Remote Support Technician, from 30 January 2018 until 22 February 2021. Early conciliation started on 9 March 2021 and ended on 29 March 2021. The claim form was presented on 23 April 2021.
2. The claim is about termination of the claimant's employment.
3. The claimant is making the following complaints:
  - 3.1 Unfair dismissal
  - 3.2 Wrongful dismissal/Notice pay
  - 3.3 Unauthorised deduction from wages
  - 3.4 Damages for breach of contract
  - 3.5 Failure to provide written statement of particulars pursuant to s. 1 Employment Rights Act 1996 (a section 1 statement)
  - 3.6 Statutory redundancy pay
  - 3.7 Holiday pay
4. The respondent's defence is that the claimant was not an employee and therefore cannot pursue the complaints set out.
5. The issue to be decided today is whether the claimant was an employee or

worker within s. 230 Employment Rights Act 1996 (ERA 1996).

6. On 6 July 2022 I heard evidence on employment status from the claimant and Mr Moroney (director of Wiseserve Limited). I had a bundle of 122 pages. For the hearing today a further supplementary bundle of 56 pages was provided. References in brackets are references to pages in the bundle of 122 pages. Where numbers are preceded by letters (the witnesses' initials) the references are to paragraph numbers in the witnesses' statements.
7. This hearing was adjourned part-heard on 6 July 2022 to decide the name of the respondent. Today I heard evidence relating to the correct name of the respondent and in submissions Mr Parry accepted that the correct name for the respondent is CA Technical Software Limited t/a Computer Assistance. An amendment was granted by consent to change the name of the respondent from Wiseserve Limited to CA Technical Software Limited t/a Computer Assistance.
8. Today I also heard submissions on employment status from the claimant's representative and from Mr Moroney. Mr Moroney confirmed at the outset of today's hearing that he is authorized to represent CA Technical Software Limited t/a Computer Assistance.

#### Findings of Fact

9. I will firstly set out my findings of facts as it is on these facts that I base my decision that the claimant was an employee.
10. Period prior to January 2018. The claimant's working relationship with the respondent dates from 2016. In late 2015 the claimant was due to move to Spain. She contacted the respondent and arranged to work remotely for the respondent while she was there. She worked for the respondent under this arrangement between January 2016 and August 2017. She later returned from Spain to the UK.
11. Mr Moroney drew my attention to a copy email dated 13 November 2015 relating to this earlier period (22A). The copy email contains a statement by the claimant saying, 'I would prefer to be self-employed, not PAYE'. The claimant strongly disputes the authenticity of that sentence in the email. She submits that this sentence has been added by someone other than her (22B/C). In any event that working arrangement ceased in August 2017. The claim relates to the period from 30 January 2018 to 22 February 2021 when the contract was terminated. Therefore, I do not need to decide whether that email was altered as it is not relevant to the period out of which the dispute arises.
12. Formation of the contract in January 2018. The claimant contacted the respondent by email on her return from Spain. She had a meeting on 24 January 2018 with three people: Mr Moroney, Hugh Coles and Junaid Baldick. It was agreed that she would start work on 30 January 2018. She accepts that she was told that she would have to be self-employed for tax purposes but says that other than that there was not much discussion about the terms on which she would be engaged (SD9).

13. Mr Moroney said that it was the claimant that asked to be self-employed at that meeting (RM9). In evidence he said that he cannot recall being present at the meeting but in his statement he says that he was present. I prefer the claimant's evidence on this as she is more likely to remember the details of a meeting where she was being offered a job. I find that that the claimant thought that she had no choice about her employment status and she was told by Mr Moroney that she would have to be self-employed.
14. Documentation. The claimant was not provided with a written contract of employment or a section 1 statement. Mr Moroney drew my attention to a contractor agreement (26-28) that he says was provided to the claimant in April 2018 (RM10). This provides that the claimant 'shall not be an employee of the Client' (27). The claimant denies ever having received this. It is not signed by the claimant. The other party to the Agreement is Wiseserve UK Limited, not the respondent. The dates do not reflect the dates when the claimant worked for the respondent. The heading says that the agreement was 'made on' 19.9.19 but further down the page it states that it came into force on 19.4.18 and ended on 1.9.22. It is signed by Mr Moroney on 10.4.18. Mr Moroney was unable to explain these discrepancies, saying that he had had little involvement in producing it. Mr Moroney did not know how it had been provided to the claimant, whether by email or left on her desk. On the balance of probabilities, I accept the claimant's evidence that this contractual agreement was not provided to her.
15. It is common ground that a handbook was provided to the claimant in March 2019 (RM14, SD11). Mr Moroney stated that some provisions did not apply to her as she was not an employee. There was no documentary evidence indicating that any of the provisions of that handbook did not apply to her, for example sick pay and disciplinary and grievance procedures.
16. Reality of the day to day relationship. Having looked at the conduct of the parties at the time the contract was formed and the documentation I have then looked at the reality of the day-to-day relationship between the claimant and the respondent.
17. The claimant's earnings were paid into her bank account. There were no deductions for tax and National Insurance. She was paid variable amounts as she was paid by the hour. She was not paid by the job. She was not required to bring in work.
18. The claimant was required to do the work personally. Mr Moroney said in submissions that he would have agreed to her sending a substitute but there was no evidence provided during the hearing or in the bundle of documentation to support this.
19. The claimant was entitled to 23 days paid holiday (RM14). Holiday had to be agreed in advance (50/51). She could take unpaid leave but in practice it had to be agreed in advance because she was on a rota.
20. The claimant worked as part of a team alongside others. When she joined

the respondent she said she looked forward to slotting into the team (25). She took instructions from Mr Hosking, her manager. Cases were allocated to her by a helpdesk supervisor. In evidence she stated that she was not aware of the employment status of others in the team and thought that it was not her business to ask them. As far as she was aware she was treated no differently to everyone else in the team. She received a bonus as part of the team (73).

21. Mr Moroney says that some members of staff were employees (RM4). He claims that the claimant was not treated the same as employee members of the team. He says she was entitled to pick and choose her work and at times refused to carry out work, or she gave it to other team members. He was unable to give any specific examples of this in evidence. He did not manage her on a day-to-day basis. For those reasons I prefer the claimant's evidence that she was integrated in the team and that she was treated no differently from other team members.
22. The claimant gradually increased her hours until she worked four days a week (RM22). I accept her evidence that in practice she worked normal office hours. She clocked in and out. She was expected to work from 8am until 4pm or from 9am until 5pm in compliance with a rota. There was also a rota to determine when employees should work from home during the Coronavirus outbreak which she was included on, and a rota for staggered lunch breaks.
23. The claimant had an appraisal (74-75). When she was working in the office she was provided with a PC. She did not bring her own equipment. She used her own equipment when working from home.

### The Law

24. An employee is defined in section 230 of the ERA 1996:

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.

25. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider multiple factors in considering whether someone is an employee. An irreducible minimum to be an employee will involve control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered.
26. A written contract is not necessary; a contract of employment can be oral and/or implied from the conduct of the parties. The intention of the parties or the belief of the parties is a possible factor to take into account, but the law requires us to look at the day-to-day reality of the relationship.
27. An 'employee' has a 'contract of employment' whereas a 'worker' has a contract whereby they undertake to perform personally any work or service and where they are not carrying on a business or profession on their own account. A worker can be described as a 'halfway house' between an employee and somebody who is self-employed.

### Conclusions

28. I have started from the concept that all employees are workers so if I find that the claimant is an employee it also means that she is a worker.
29. What was intended between the parties is not enough to decide employment status. The claimant accepted the situation that was presented to her. There was no deduction from her pay for tax or National Insurance. These factors are not enough to outweigh the other factors which I have taken into account and which I refer to below. I need to look at the reality of the relationship: control, mutuality of obligation and personal performance.
30. Control. I have taken into account that the claimant regularly worked four days a week, she had to clock in and out, the work was allocated to her by a help desk, lunchbreaks were on a rota and whether she worked from home was determined by a rota. She had an appraisal. She had to ask permission for holidays and to take time off, whether that was paid or unpaid. She was presented with a handbook that indicated that she was entitled to sick pay and that imposed disciplinary and grievance procedures. She was provided with equipment at work. She did not bring her own laptop into the office but only used it when working from home. I find from this that the respondent had a considerable degree of control over her day to day work, including when, how and where she carried out the work.
31. Mutuality of Obligation. The claimant was expected to work set hours as determined by the rota; she was expected to work in the office or as agreed from home. She was expected to agree holidays in advance.
32. Personal performance. The claimant did not substitute anyone else to do her work. No evidence has been produced that she would have been allowed to do so. I find it would not have occurred to her or the respondent that she could do so and therefore the condition of personal service is satisfied.

33. Other factors. I have also taken into account that the claimant was integrated into the business in that she was not treated any differently from others in the team who were employees. She was not in business on her own account as she was paid by the hour rather than by the job.
34. Based on those fact findings and applying the law I find that the employment status of the claimant was that of an employee. The claim will now be listed for a full hearing on liability and, if appropriate, remedy.

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Employment Judge S Matthews

Date 24.10.22

Judgment sent to the parties on

31 October 2022

GDJ  
For the Tribunal office