EMPLOYMENT TRIBUNALS

Claimant: Mrs K English

Respondent: Lancashire County Council

Heard at: Manchester **On:** 27 February 2023 and 26 April 2023 (in chambers)

Before: Employment Judge Slater

Representation
Claimant: Mr H Menon, counsel
Respondent: Mr D Bunting, counsel

RESERVED JUDGMENT

1. The claimant was not employed under a global or umbrella contract of employment.

2. The Tribunal does not have jurisdiction to consider the claimant's complaints of unfair dismissal and breach of contract which were presented out of time.

3. The Tribunal does have jurisdiction to consider the claimant's claim to be entitled to a statutory redundancy payment.

4. The complaint in respect of holiday pay is dismissed on withdrawal by the claimant.

REASONS

Introduction and issues

1. This was a public preliminary hearing listed to determine whether the claimant was a worker or employee of the respondent.

2. The claimant brought complaints of unfair dismissal, entitlement to a statutory redundancy payment, breach of contract in relation to failure to give notice of termination of employment and a claim in respect of holiday pay.

3. Following a discussion at the start of the hearing and Mr Menon taking instructions from the claimant, Mr Menon informed me that the claimant was withdrawing her claim in respect of holiday pay.

4. In discussion, Mr Bunting, for the respondent, had accepted that the claimant was a worker. However, given the withdrawal of the complaint in respect of holiday pay, all the remaining complaints were dependent on the claimant being an employee.

5. The only issue about employment status which I had to determine at this hearing was, therefore, about whether the claimant was an employee of the respondent at relevant times. If she was not, the Tribunal does not have jurisdiction to deal with her complaints of unfair dismissal, entitlement to a statutory redundancy payment and breach of contract.

6. The claimant contends that she was an employee under a global or umbrella contract from 2009 at the latest and that she was dismissed with effect from 17 December 2021. The respondent disputed that the claimant was an employee under a global or umbrella contract or when she was contracted to carry out a particular piece of work. The respondent contends that the claimant was a casual worker and remains on the respondent's record as a casual worker who may be offered work if available, although there has been no work to offer casual staff, including the claimant, since December 2021. The respondent denies that the working relationship with the claimant ended on 17 December 2021.

7. The parties agreed that I should deal with related time limit issues as well as with employment status at this hearing. I informed Mr Menon that he would have permission to ask the claimant additional questions to deal with the time limit issue.

8. The parties agreed that the issues I needed to consider were as follows:

8.1. Was there a global or umbrella contract under which the claimant was an employee? If so, has it ended and, if so, when?

8.2. If there was no umbrella contract, was the claimant an employee of the respondent when engaged on a particular contract?

8.3. If so:

8.3.1. when did the last employment end?

8.3.2. Was there continuity of service between periods of employment so the claimant had sufficient continuous service to claim unfair dismissal/redundancy payment? The Tribunal would consider whether continuity of employment was preserved by s.212(3) Employment Rights Act 1996 (ERA).

8.4. Was the claim presented in time and, if not, was it reasonably practicable to present it in time and, if not, was it presented within a reasonable time after expiry of the time limit?

9. When making my reserved decision, I have reminded myself that a different test applies to time limits for bringing a complaint about a statutory redundancy payment to that applying to complaints of unfair dismissal and breach of contract. When identifying the issues to be considered at the start of the hearing, we did not identify and record the different issues which apply when considering time limits in relation to a complaint about non-payment of a statutory redundancy payment. Neither representative addressed me on these. I have set out s.164 ERA in the section on the law. In accordance with this, I had to consider whether one of the events set out in s.164(1) had happened before the end of 6 months beginning with the relevant date, as defined in s.145 (subject to extension to take account of the effects of early conciliation). These events are (a) the payment has been agreed and paid; (b) the employee has made a claim for the payment by notice in writing given to the employer; (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or (d) an unfair dismissal complaint has been presented by the employee. If none of these events had happened in the first six month period, but one of the events had happened within a further period of 6 months, I had to consider whether it would be just and equitable that the claimant should receive a redundancy payment. If I did, in accordance with s.164(2), the claimant is not deprived of her right to a redundancy payment (if she otherwise meets the requirements for one to be paid).

10. I did not consider that any further evidence would have been given, had these issues been specifically identified at the start of the hearing. Rather than inviting further submissions in writing relating to the issues raised by s.164 ERA before making a decision, I have considered it proportionate, in accordance with the overriding objective, to decide the time limit issue for the redundancy payment claim, in accordance with the relevant legislation and on the basis of the facts found. It is open to the parties to make an application to reconsider this part of my judgment (or any other part) if they consider it would be in the interest of justice for me to do so.

Evidence

11. I heard evidence from the claimant and from Jacqueline Brindle and Deborah Hall for the respondent. Ms Brindle retired on 30 November 2022 but had managed the Road Safety Education Team since 2013 and the wider Road Safety Team for the respondent since 2016. Ms Hall joined the Road Safety Education Team in 2007 and became Team Leader in 2008. There were written witness statements for the witnesses and they all gave oral evidence.

12. I had a bundle of documents originally of 335 pages. Some pay slips were added to the bundle at the request of the claimant and with the agreement of the respondent, as pages 336-337.

Facts

13. The respondent has a Road Safety Team, which includes a Road Safety Education Team. The Road Safety Team has a number of permanent employees. The Team also has a group of workers who are called on to carry out work on a variety of tasks and projects. The claimant was one of this group. The respondent refers to these workers as casual staff. Where I use this terminology, in my findings of fact, it is used as a shorthand, and does not indicate any conclusion on the employment status of the claimant.

14. Some projects undertaken by the Road Safety Team are demand led, with schools requesting the service. There is no guarantee of the frequency of this work. However, the respondent acknowledges that, in relation to the Bikeability training referred to later, the same schools tend to make the same training requests, so the claimant delivered the same training to the same schools each year until the respondent stopped carrying out the work internally after July 2021 The respondent tended to offer workers work in schools the worker was familiar with and close to where they lived.

15. From 14 June 1999, the claimant worked at times for the respondent on various projects encouraging aspects of road safety awareness and training. The claimant delivered training, support and resources to schools and colleges.

16. If there was ever a written agreement setting out the terms on which the claimant would do work for the respondent, neither party has been able to provide this to me. I accept that Ms Brindle was not aware of any such written agreement so, if there was anything, this pre-dated her involvement with the Road Safety Team, which began in 2013.

17. The respondent provided the claimant with equipment to carry out the work, including a laptop when needed (although a laptop was not provided to the claimant on an ongoing basis), business cards and safety equipment.

18. The claimant was paid by the respondent through the PAYE system. The claimant was paid for hours worked, with her pay calculated on an hourly rate basis. She submitted timesheets showing the hours worked.

19. The claimant did not receive any pay for time between work on projects.

20. There was no restriction on the claimant working for others as well as the respondent.

21. The claimant was never required to book annual leave, with a set allowance, on the respondent's HR system, as were permanent employees.

22. The claimant was paid holiday pay on a pro rata basis for period when she did work. Holiday pay was paid, indicated by a separate entry, in every month's pay.

23. There was evidence that, at some stage, the claimant had paid into the respondent's pension scheme. However, this had stopped and neither the claimant nor the respondent could explain the basis on which she had been a member or the reasons for which she ceased to be a member. The claimant's one-time

membership of the pension scheme does not, therefore, assist me in deciding whether the claimant was an employee of the respondent.

24. In the early years, the claimant was invited to, and attended, employee team training days, training sessions, meetings and social events. It is about 15 years since she last attended a team day.

25. The claimant did not attend monthly meetings of the road safety team.

26. I find that the claimant was not required to attend team meetings and team awaydays. Attendance at these meetings and awaydays is mandatory for those regarded as employees.

27. In the early stages of her engagement with the respondent, arrangements for work would be made over the phone, followed up by paperwork in the post. This subsequently changed to email correspondence. The claimant would receive a chart detailing the work location and dates. The claimant was given dates to work and she never declined these, always being available.

28. The claimant was allocated work every school term for over 20 years.

29. The claimant acknowledged in her further and better particulars that there was no minimum amount of hours which the respondent was obliged to provide to her, nor was there any formal arrangement in place setting out that the claimant was obliged to accept work. The claimant asserted that there was an understanding between the parties that she would be available for shifts unless she had booked a day off well in advance.

30. Towards the end of 2003, the claimant applied for, and was appointed to, a post with the respondent of Senior Training Co-ordinator (Casual). This meant that she was offered additional work at a higher pay rate. She could continue also to do work at a lower pay rate.

31. For several years, the claimant was involved in delivering a Wasted Lives presentation to High Schools as and when required. Responsibility for development and delivery of this intervention transferred to Lancashire Fire & Rescue following a reduction in road safety staff resources at the respondent.

32. In 2009, the claimant attended a national standards instructor course, at the respondent's expense, to become a national standards Bikeability instructor. From 2009, the claimant and her colleagues conducted these courses in schools, returning to the same schools each year. The training the claimant gave in schools had to be done in accordance with the training she had received. Around 90% of the work the claimant did for the respondent from 2009 was on Bikeability. The claimant, two others and Jan Reef, the Bikeability project leader and a permanent employee of the respondent, were qualified to do the work. Between them, they covered some of the schools asking for training, and the respondent outsourced work at the other schools which asked for training.

33. Work is mostly offered to casual staff by telephone. However, I accept the claimant's evidence that the claimant had an understanding with the Bikeability project leader, Jan Reef, that she was always available for work unless she had

told him that she needed time off, so he did not call her to offer her specific dates before putting the dates he wanted her to work on a chart. There was a period each year when the claimant would not be available because of lambing on the farm where she lived. There was another time when the claimant said she would not be available for two weeks because of a special holiday for her 40th wedding anniversary. The team leader, Jan, gave the claimant dates for work a term in advance, assuming the claimant would be available unless she had told him otherwise. The chart was produced, taking account of the dates when the claimant had said she would not be available.

34. I accept Ms Brindle's evidence that she sat next to Jan Reef in an open plan office and overheard him speaking to casual workers on the telephone, asking them whether or not they were available for particular work. If work was not accepted by one casual worker, it would be offered to another.

35. I accept that the respondent's view was that workers, including the claimant, were not obliged to accept work offered to them. There were no adverse repercussions for workers if they refused work offered to them.

36. If a worker had agreed to do work but then, for some reason, was unable to do it, they would call the office and Jan Reef would ask other casual workers if they could cover this at the last minute. Workers would normally give a reason if they were unable to do work they had previously said they would do, but, if they did not volunteer a reason, they were not asked about this. It was quite unusual for a worker not to be able to do work they had agreed to do. There were no adverse consequences for the worker if they withdrew from work they had previously agreed to do.

37. In the period March to July 2020, the claimant did not do any work for the respondent, due to school closures because of the Covid pandemic but was made payments similar to those paid in previous years. This was in accordance with the respondent's corporate policy on casual staff during Covid. Permanent staff were not eligible for furlough but received their salaries as normal and continued working from home. The claimant started doing work again at schools in the autumn of 2020.

38. In June 2021, the claimant had contact with HR about whether she was eligible for a long service award. She was informed by an email dated 9 June 2021 by an HR adviser that the corporate team had advised them that the recognition of long service policy applied only to employees. She wrote "casual work, where someone is effectively on the list to be offered work if and when this becomes available, where they are able to choose to accept any work offered to them or not, does not count as continuous service." The claimant forwarded this response to Ms Brindle, expressing disappointment and asking if Ms Brindle thought this was fair. Ms Brindle replied, writing that she could understand the claimant's disappointment. She wrote that it was the case that the long service award was only available to staff on permanent contracts rather than casual staff. She wrote "I can see how this seems unfair, given that you have done so much, however this policy takes into account that casual staff are free to decline any work offered where contracted staff are not." The claimant replied, writing "I didn't expect any different really as rules are rules."

39. In the spring of 2021 the Bikeability team leader who had organised the claimant's work previously retired. The respondent reviewed the duties of the post holder in the light of changing priorities and decided to cease all direct delivery of Bikeability by the respondent and to rely entirely on external providers. From the academic year beginning in September 2021, the respondent did not deliver internally any Bikeability work. I accept that Jan Reef told Ms Brindle and Ms Hall in March 2021 that he had informed the claimant and others involved in the delivery of Bikeability work that this project would be ending in July. I find that Jan Reef had informed the claimant about this.

40. The last day the claimant did work for the respondent was 16 July 2021, for which she was paid on 30 September 2021.

41. On 5 August 2021, the claimant and colleagues attended a meeting with Ms Brindle. At that meeting, Ms Brindle set out a number of opportunities for casual work. The claimant and her colleagues asked for these to be put in writing.

42. On 15 September 2021, Ms Brindle sent the claimant and others what was described as an overview of the potential casual work available in road safety over the coming 12 months. The attached work chart was labelled "Road safety casual staff work 2021/2022". Jackie asked the claimant and others to take a look and indicate whether or not they would be interested in each possibility and to return the form to them. If they were potentially interested, Jackie wrote that they would get on and organise any necessary training. The claimant and two of her colleagues chose training for a new program to be named "Modeshift". It is agreed that, had the claimant undertaken this training, the respondent would have paid for the training.

43. In an email dated 17 September 2021, the claimant asked Ms Brindle for another meeting to understand exactly what was on offer. She wrote that she was unable to establish, from the information provided, the amount and frequency of work on offer. The claimant wrote that she was not interested in occasional evening or weekend work, zoom meetings or sorting the stockroom out. Ms Brindle replied on 21 September, writing that she was sorry but they were unable to be more certain about anything at that time. She wrote that she was going on leave but if the claimant gave "Debs" [Hall] a call, she would be able to talk the claimant through the options.

44. In an email dated 11 October 2021, Ms Hall informed the claimant that they could offer her training to equip her to deliver Right Start Theory Training and asked if the claimant would be interested in this. I have not seen any specific reply to this email.

45. A meeting was arranged for the claimant, some colleagues and Ms Hall on 26 October 2021. The claimant and her colleagues confirmed at that meeting that they would do the training for Modestar. Ms Hall emailed the claimant on 30 November 2021. She wrote that, following on from their meeting, she was organising a training session with Modeshift which would hopefully take place in January. She asked the claimant if she was interested in attending the training for Travel4Life as well. She asked the claimant to have another look at the overview previously sent by Ms Brindle and to let her know by email which areas of work she was interested in so that their team knew to contact the claimant directly for available work.

46. I accept that it was difficult for Ms Hall to answer questions put by the claimant and others as they had no details of the frequency of possible work for the coming 12 months as they are a demand led service and had not advertised the programme to schools at the time of the meeting.

47. The respondent delivered Travel4Life training on request. This consisted of talks about road safety. There had been some word of mouth promotion of this training. There was potential to carry out more of this training but the respondent did not want to promote this unless they had someone to deliver this. The training was given to community groups, sometimes in the evenings and at weekends, but there was some during weekday afternoons.

48. The claimant replied to Ms Hall on 1 December 2021. She wrote that her position was still the same as in her email of 17 September. She expressed disappointment at the postponement of the Modestar training until the New Year, writing that she and others had made themselves available time and again since July. She wrote that six months had passed and she had not been offered any work.

49. Ms Hall replied on 9 December, writing that she had tried to secure training for December but it was not successful and January was the next best option. The training was being delivered by an external company rather than in-house. Ms Hall again asked if the claimant would be interested in attending the Travel4Life training. She asked if the claimant would like to be part of the trained staff that could be offered for daytime presentations.

50. In another email sent on 9 December, Ms Hall asked the claimant if she was happy to resume Right Start Theory training. The claimant did not reply to this email. Right Start was the respondent's biggest project alongside Bikeability.

51. The claimant replied to Ms Hall on 16 December. She said she would wait to hear about the Modeshift training. She wrote that, since there had been no offer of paid work since July 2021, she had signed up with an agency in the hope of getting more bookings for their holiday cottage and that this involved being available every Friday and some Mondays. She wrote:

> "I am staggered to learn that two new staff have been employed to do work that we are trained to do without any thought of tapping into our extensive knowledge gained over 20 years. We never received any official notification of your decision to close the Bikeability department way back in the spring outlining the way forward for us, and still to date we have had no definite offers of work many months later! As I stated previously at least twice, I am not interested in sorting the stockroom, zoom meetings, occasional travelforlife on weekends or evenings. This does not make up for the four days a week I was used to with Bikeability and wasted lives over many years."

52. On 17 December 2021, Ms Hall sent the claimant an email. This informed the claimant that, as a result of the omicron variant of covid-19, the Modeshift Stars training expected to take place in January had been cancelled. Ms Hall wrote that they had taken the decision to put the new intervention on hold until the end of that academic year and they would review their position in the autumn.

53. There was no correspondence from the claimant to the respondent after the letter of 17 December 2021, until her letter of 20 April 2022 referred to below.

54. The claimant understood from the letter of 17 December 2021 that she was unlikely to have any work from the respondent which she was interested in doing until, at the earliest, the following autumn. Until the letter of 17 December 2021, the claimant had been hopeful that she would receive the Modestar training in January and obtain some work from the respondent on the Modestar project after that.

55. At some point after the letter of 17 December 2021 and before 12 March 2022, the claimant and her colleagues sought legal advice.

56. At the time Ms Brindle wrote her witness statement in January 2023, the Modestar project had still not started due to staffing issues.

57. The claimant notified ACAS under the early conciliation procedure on 12 March 2022 and the early conciliation certificate was issued on 1 April 2022.

58. On 20 April 2022, the claimant wrote to the respondent as follows:

> "I hereby give you notice that I believe that my employment with LCC in the Road safety department was terminated on 17 December 2021. I am in the course of pursuing claims for unfair dismissal, redundancy payment, notice pay (12 weeks) and any other payment that may be due to me.
>
> "For the sake of clarity, this email/letter should be treated as a Notice of Redundancy Payment which is hereby served upon Lancashire County Council. Take notice that I accordingly claim a statutory redundancy payment pursuant to sections 147-154 of the Employment Rights Act 1996."

The claimant also wrote that she was aware that ACAS had already been in discussion with the respondent under the early conciliation process and invited them to contact ACAS if they wished to engage in discussions to resolve her claims.

59. I consider it likely, given the terminology used, that this letter was either drafted by a legal adviser, or written after receiving legal advice. The parts of the letter asserting that employment ended on 17 December 2021 and claiming a statutory redundancy payment pursuant to section 147-154 ERA (which deal with right by reason of lay-off or short time) are inconsistent since, if the employment had ended, the provisions in sections 147-154 would not be applicable. It was perhaps intended that these were meant to be alternative arguments, although they were not expressed that way. The letter indicates to me a confusion on the part of the claimant and her advisers as to what the claimant's employment situation was at that time.

60. The claimant presented her claim on 25 April 2022.

61. On 11 October 2022, the claimant was sent an email by the respondent regarding staff updates and training. I accept that the respondent considers that the claimant remains on their books as a casual member of staff.

Submissions

62. Mr Bunting provided a written skeleton argument and made additional oral submissions on behalf of the respondent. Mr Menon made oral submissions only on behalf of the claimant.

63. I do not seek to summarise Mr Bunting's written skeleton argument which can be read if required. In oral submissions, he submitted that there was no global contract of employment. There was no obligation on the claimant to accept work. There was no consequence of a refusal. There was no obligation for the respondent to offer work. There was no mutuality of obligation. Mr Bunting submitted that, if there was a contract of employment during the assignment, there was no ongoing mutual obligation between assignments.

64. Mr Bunting submitted that it was for the claimant to establish that the exception in section 212 applied. The claimant had been doing Bikeability work since at least 2017. Mr Bunting accepted that there was a potentially viable temporary cessation of work or agreement between terms but, once work came to an end in July 2021, there was no temporary cessation of work. If there were subsequent individual contracts of employment, even if there was continuity of service, this came to an end in July 2021.

65. Mr Bunting submitted that, if there was an umbrella contract of employment, there was nothing in the 17 December correspondence which could be taken to be a dismissal. If there was a global contract, there was still a global contract.

66. In relation to time limits, Mr Bunting submitted that the claimant could not establish that it was not reasonably practicable to present the claim in time, if employment had ended in July 2021.

67. Mr Menon submitted that a multifactorial test needed to be taken with no single issue being necessarily conclusive. However, the case stood or fell more or less on the mutuality of obligation issue. He submitted that, with the length of time the claimant had worked for the respondent, there was a clear and consistent pattern of regular work, albeit with variable hours. He submitted that the tribunal should draw from this that there was an obligation to offer and to accept work. What mattered was the work history, fortified by the claimant evidence of her understanding with Jan Reef.

68. Mr Menon submitted that there was a global contract of employment. If the tribunal was not with him on that, he submitted that each assignment was a separate contract of employment. Work was always in the offing for two decades. Any cessation of work was necessarily temporary and always with an expectation that it would be renewed.

69. In relation to termination, there was an expectation, even on the respondent's own evidence, that the claimant would continue to be offered assignments until it became clear that the Modeshift training would no longer happen. Mr Menon

submitted that the email of 17 December 2021 made it clear that this was not going to happen. Any cessation thereafter would not be temporary.

70. If the tribunal thought that termination was earlier, so the claim was out of time, the claimant could not reasonably have known that the date of termination was any earlier. It was reasonable for the claimant to operate on the basis that employment terminated from 17 December. On 17 December, it became clear to the claimant that there would be no work for 10 months. There could not be a contract of employment where the claimant was to be unpaid for 10 months with no work. There was an implicit obligation to give work and pay for that work.

71. Mr Bunting referred to the following cases in his written submissions:

Thomson v Fife Council EATS/0064/04
O'Kelly and ors v Trusthouse Forte plc 1983 ICR 728, CA
Clark v Oxfordshire Health Authority 1998 IRLR 125, CA
Hughes v Gwynedd Area Health Authority [1977] IRLR 436 EAT.

72. Mr Menon provided the Tribunal with a copy of a decision of the EAT in **Khan v Checkers Cars Limited UKEAT/0208/05.** He made no specific oral submissions about the relevance of this authority but highlighted paragraph 26 of the judgment.

73. I have taken account of the legal authorities referred to in making my decision.

Law

74. An "employee" is defined by section 230(1) Employment Rights Act 1996 as being "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment." "Contract of employment" is defined as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider relevant 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.

75. In addition to the authorities cited to me, I have taken account of the following authorities which recognize the possibility of there being individual contracts of employment during particular assignments even where there is no global or umbrella contract of employment which subsists between assignments:

McMeechan v Secretary of State for Employment 1997 ICR 549 CA
Commissioners for Her Majesty's Revenue and Customs v Professional Game Match Officials 2021 EWCA Civ 1370 CA
Cornwall County Council v Prater 2006 ICR 731 CA
North Wales Probation Area v Edwards EAT 0468/07
Little v BMI Chiltern Hospital EAT 0021/09 (this being a case where it was found that the individual contracts were contracts for freelance services and not of employment)
Drake v Ipsos Mori UK Ltd 2012 IRLR 973 EAT.

76. To qualify for the right not to be unfairly dismissed, except in special circumstances not relevant for this case, the claimant must have been continuously employed for at least two years ending with the effective date of termination. The same qualifying period applies for entitlement to a statutory redundancy payment. Sections 210-212 ERA set out the principal provisions dealing with calculating the period of continuous employment. Section 212(3)(b) has the effect that weeks where there is no contract of employment will count towards continuous service if the claimant is absent from work on account of a temporary cessation of work. Section 212(3)(c) preserves continuity where the claimant is absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose.

77. Claims for unfair dismissal and breach of contract must be made within 3 months beginning with the effective date of termination (subject to extension to take account of the effects of early conciliation) unless it was not reasonably practicable to present the claim within this time, in which case the claim must have been presented within a reasonable time thereafter.

78. Section 164 ERA sets out the time limits for bringing a claim for a redundancy payment. It provides:

> "(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
>
> (a) the payment has been agreed and paid,
>
> (b) the employee has made a claim for the payment by notice in writing given to the employer,
>
> (c) a question as to the employee's right to, or the amount of, the payment has been referred to an [employment tribunal]1 , or
>
> (d) a complaint relating to his dismissal has been presented by the employee under section 111.
>
> (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
>
> (a) makes a claim for the payment by notice in writing given to the employer,
>
> (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
>
> (c) presents a complaint relating to his dismissal under section 111,
>
> and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.
>
> (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—
>
> (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
>
> (b) all the other relevant circumstances.

> [(4) repealed]
>
> (5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2)."

79. "Relevant date" in relation to the dismissal of an employee for the purposes of the provisions relating to redundancy payments is defined in s.145. S.145(2)(c) provides that, in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.

Conclusions

Whether there was a global or umbrella contract of employment and, if there was, whether the Tribunal has jurisdiction to consider the claimant's complaints

80. I conclude that there was no global or umbrella contract such that the claimant's relations with the respondent were governed by a contract of employment even in weeks when the claimant was not working for the respondent. I reach this conclusion principally because of the lack of mutuality of obligation. I conclude that the respondent was not obliged to offer the claimant any minimum amount of work and the claimant was not obliged to accept any work offered. Most other factors are also more consistent with the claimant not being an employee under a global or umbrella contract than with her being such an employee. Unlike permanent staff, the claimant did not have to apply to take holidays and did not have a fixed amount of annual leave. She did not have to attend team meetings. The claimant was only paid for hours worked plus an amount for holiday accrued during periods of work. The claimant was free to work for other people.

81. If I had concluded that the claimant was employed under a global or umbrella contract, I would not have concluded that the claimant's employment had come to an end by dismissal on 17 December 2021. I do not consider the letter can be construed as dismissing the claimant. The letter contemplates the respondent reviewing the situation in relation to the Modestar training in the autumn. This is consistent with the claimant remaining on the respondent's books for casual work as and when it becomes available.

82. The claimant put forward no alternative date or manner of the global or umbrella contract coming to an end by actual or constructive dismissal.

83. If I had concluded (which I have not) that there was a global or umbrella contract of employment, I would not have concluded that there had been a dismissal. The Tribunal would not, therefore, have had jurisdiction to consider the complaints of unfair dismissal, entitlement to a redundancy payment and breach of contract in relation to the giving of notice, which all require there to have been a dismissal.

Whether there was a series of contracts of employment and, if so, whether the Tribunal has jurisdiction to consider the complaints having regard to the length of continuous service, the effective date of termination and the relevant time limit provisions

84. I conclude that, at least during the time when the claimant was doing the Bikeability work, the claimant was employed under a series of contracts of employment. There was no obligation for the respondent to offer her this work or for the claimant to accept work offered. However, if the work was offered and accepted, there was an expectation that the claimant would do the work and the respondent would pay her for it. The claimant was to do the work in the way she had been trained to do it by the training paid for by the respondent. I consider, having regard to the authorities (including the case of **Commissioners for Her Majesty's Revenue and Customs v Professional Game Match Officials 2021 EWCA Civ 1370 CA),** that the lack of fetter on the claimant's theoretical right to withdraw from the work on notifying the respondent, does not negate the necessary mutuality of obligation. I conclude that, for the duration of each individual contract, there was the necessary mutuality of obligation and that other factors, which included payment of the claimant under the PAYE system, were sufficiently consistent with an employment relationship for there to be a contract of employment.

85. Since I have found that there was no global or umbrella contract of employment existing between specific contracts, the claimant will only have continuity of service between engagements if one of the provisions of s.212(3) ERA applies. In the period from when the Bikeability work began, in 2009, until it ended, in July 2021, I conclude that, between contracts, the claimant was absent from work on account of a temporary cessation of work so s.212(3)(b) preserved continuity of service. The expectation of the parties was that, each school year, schools would seek the respondent's services to provide Bikeability training and the claimant would be engaged to provide this on various dates during the academic year. I consider the period when training could not be provided because of the Covid-19 pandemic also to be a period where the claimant was absent from work on account of a temporary cessation of work. It was anticipated that the work would resume once this was possible, and this did happen. This is supported by the claimant receiving payments from the respondent during the Covid cessation of work. Once, however, the respondent had decided not to carry out Bikeability work internally after July 2021, I conclude that the claimant was no longer absent from work on account of a temporary cessation of work. The claimant might have been offered other work, if available, and she might have accepted this, but there was not a sufficient expectation of the claimant beginning work again for the respondent in the next academic year for continuity of service to be preserved under the temporary cessation of work provisions. In fact, the claimant has not carried out any further work for the respondent since 16 July 2021.

86. I conclude that the claimant's employment ended on 16 July 2021. I conclude the claimant had completed at least two years' continuous service by the end of her employment. She was, therefore, entitled to bring a complaint of unfair dismissal and for a redundancy payment. I am not deciding at this preliminary hearing whether, if the claims were allowed to proceed, she would succeed in those complaints.

87. The complaint of unfair dismissal was presented on 25 April 2022. The period of ACAS early conciliation was 12 March to 1 April 2022. For there to be an extension to the primary time limit, ACAS early conciliation had to have been started by no later than 15 October 2021. It was not. The claim must, therefore,

have been presented by 15 October 2021 to be presented in time. It was not. I conclude that it was reasonably practicable to present the claim by this date. The claim knew, long before 15 October 2021, that the Bikeability work, which had been her regular work since 2009, was not continuing. She had been provided, in September 2021, with a list of possible available work but knew that there was uncertainty about what would be available and when. I reject the submission made on behalf of the claimant that it was only with the letter of 17 December 2021 that it became clear that the cessation of work was more than temporary. I conclude that the Tribunal does not have jurisdiction to consider the complaint of unfair dismissal.

88. The complaint of breach of contract had to be presented within the same time as the complaint of unfair dismissal. It was not presented in time. The same test of reasonable practicability applies, as for unfair dismissal, if the complaint has not been presented in time. I conclude, for the same reasons as in relation to the complaint of unfair dismissal, that the Tribunal does not have jurisdiction to consider the complaint of breach of contract.

89. A different time limit applies to the complaint about a redundancy payment. The relevant date is the last day of employment i.e. 16 July 2021. One of the events listed in s.164(1) had to occur within 6 months beginning with that date i.e. by 15 January 2022. No extension to this 6 month period because of early conciliation applies because notification to ACAS was not made within this primary time limit. None of those events occurred within the 6 month period. Several of the relevant events occurred in the next 6 month period i.e. the period ending 14 July 2022: the claimant presented a claim to the employment tribunal for both a redundancy payment and unfair dismissal; the claimant also, by letter of 20 April 2022, made a claim to the employer for a redundancy payment. In accordance with s.164(2), the claimant will not be deprived of the right to a redundancy payment if it appears to me just and equitable that she should receive such a payment. In considering whether it would be just and equitable, s.164(3) provides that I should have regard to the reason shown by the employee for her failure to take any such step as is referred to in s.164(2) within the period mentioned in s.164(1) and all the other relevant circumstances.

90. It appears to me, from the letter of 22 April 2022 in particular, that the claimant was confused as to her employment situation and her employment rights following the end of the Bikeability work and the uncertainty which followed as to when and if other work she considered suitable would be offered to her. The letter of 17 December 2021 indicated that new work she was interested in was unlikely to be offered to her until the following autumn at the earliest. The law relating to the employment status of casual workers is complicated and it is understandable that the claimant did not feel the need, or wish to, take any legal action until a point came when she concluded, after receiving the letter of 17 December 2021, that she was not going to be offered any work she considered suitable until the following autumn at the earliest. It seems likely to me, from the dates when the claimant commenced early conciliation and began proceedings, that she was acting on legal advice in taking 17 December 2021 as the relevant date for time limits to begin to run. I take this into account as an explanation for not taking one of the s.164(1) steps in the period ending 15 January 2022. The just and equitable test is not as strict as the reasonably practicable test I applied when considering time limit issues for the complaints of unfair dismissal and breach of contract. Other factors I

consider relevant in considering whether it would be just and equitable for the claimant to receive a redundancy payment are that the claimant had worked regularly, every school year, since 2009 (barring a period due to Covid lockdown, during which she was paid by the respondent) on the Bikeability work, on what I have concluded was a series of employment contracts, with continuity of service preserved between the contracts. When the respondent no longer had a need for the claimant's services to do this work, she lost her regular source of income. If the claimant otherwise meets the requirements to be entitled to a statutory redundancy payment, it appears to me just and equitable that she should not be deprived of this entitlement because of the difficulties of understanding her employment status and rights. I, therefore, conclude that it is just and equitable that the claimant should receive a statutory redundancy payment relating to her service on the Bikeability work if she is otherwise entitled to such a payment.

91. In summary, I conclude that the Tribunal has jurisdiction to consider the claim for entitlement to a statutory redundancy payment because the claimant was an employee when employed on the Bikeability work, with sufficient continuous service, and the claim is not time barred.

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Employment Judge Slater

Date: 28 April 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

4 May 2023

FOR EMPLOYMENT TRIBUNALS