



EMPLOYMENT TRIBUNALS

Claimant: Ms Y Zalzala

Respondent: Fallowfield Library & Community Resource Centre (1)
One Manchester Limited (2)
Manchester City Council (3)

Heard at: Manchester Employment Tribunal

On: 26 and 27 June 2023

Before: Employment Judge Mark Butler

Representation

Claimant: Self-representing
First Respondent: Mr R Willis, (former Trustee)
Second Respondent: Mr P Tomison (of Counsel)
Third Respondent: Mr E Stenson (of Counsel)

JUDGMENT (AT PUBLIC PRELIMINARY HEARING)

1. The claimant did not have a contract of service (pursuant to s.230 of the Employment Rights Act 1996) with the first respondent.
2. The claimant did not have a contract personally to do work (pursuant to s.83 of the Equality Act 2010) with either the first, second or third respondent.
3. The Employment Tribunal does not have jurisdiction over any of the claims that the claimant is seeking to bring.
4. The claimant's claims are dismissed in their entirety.
5. The final merits hearing dates of 27, 28 and 29 August 2023 are vacated.

REASONS

INTRODUCTION

6. Oral judgment was handed down to the parties at the end of the hearing on 27 June 2023. The claimant has since made a request for written reasons. These are those written reasons.
7. This case came before Employment Judge Allen for a Case Management Preliminary Hearing on 25 January 2023. Employment Judge Allen, after having considered and determined various applications, recorded the live claims being brought by the claimant as being an unfair dismissal complaint against the first respondent, and complaints of discrimination against all three respondents. However, he also noted that the employment status of the claimant was also an issue that needed to be determined. It is on the question of the claimant's employment status that this case was listed for today's public preliminary hearing.
8. To assist me in today's hearing, I was provided with an electronic file of documents that ran to 376 electronic pages. I heard evidence from the claimant, from Mr Willis (who had held the position of Partnership and Development Manager with the first respondent during the claimant's engagement), and from Ms Taylor, who was employed by the second respondent.

LIST OF ISSUES

9. The issues for me to determine today were clearly recorded by Employment Judge Allen following the Preliminary Hearing on 25 January 2023. These were:

"The preliminary issues to be determined are:

(i) Was the claimant an employee within the meaning of section 230(1) of the Employment Rights Act 1996 of:

a. Fallowfield Library & Community Resource Centre (the first respondent);

(ii) Was the claimant an employee within the meaning of section 83(2)(a) of the Equality Act 2010 of:

a. Fallowfield Library & Community Resource Centre (the first respondent);

b. One Manchester Limited (the second respondent); and/or

c. Manchester City Council (the third respondent).

(iii) Does the Tribunal have jurisdiction to consider all or any of the claimant's claims? This arises because the date when the claimant was informed about the decision regarding her being a volunteer was 5 May 2022. The date when a claim should have been entered or ACAS Early Conciliation commenced would appear to be 4 August 2022. The first claim against the first respondent was entered on 31 August 2022 (after ACAS Early Conciliation between 29 and

31 August 2022). The claim against all three respondents (being the first claim against the second and third respondents - One Manchester Limited and Manchester City Council) was entered on 21 October 2022 (after ACAS Early Conciliation with the second and third respondents between the 17-19 October 2022). The Tribunal will need to determine if the claims were entered in the time required. It may also involve consideration of: whether it was reasonably practicable for the claimant to enter her claims in time and, if not, whether they were entered in such further period as the Tribunal considers reasonable (for the unfair dismissal claim against the first respondent); and/or whether it is just and equitable to extend time (for the discrimination and harassment claims against all three respondents).

(iv) Whether the claimant's eye condition amounted to a disability at the relevant time, as defined by section 6 of the Equality Act 2010? The claimant relies upon a severe eye injury for which she was in hospital for surgery in 2022 as being a disability. She contends that she lost sight in her left eye completely and was then operated on under a general anaesthetic."

10. It was agreed with the parties that I would determine the employment status question first. And this was because this impacted upon the entirety of the claims. If the tribunal was found to have jurisdiction to hear the claim or claims due to the claimant's employment status, then I would go on to determine disability. However, if I was to find that the tribunal did not have jurisdiction to hear any of the claimant's claim by virtue of her employment status, then her claims would be dismissed accordingly.

LAW

11. Section 230 of the Employment Rights Act 1996 explains:

(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...

12. Section 83 of the Equality Act 2010 states:

(2) "Employment" means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.

13. Helpfully, I was taken to **South East Sheffield Citizens Advice Bureau v Grayson** [2004] ICR 1138, and in particular paragraphs 14-20 of that decision, where in determining whether contractual obligations were being placed on a volunteer to do work, the EAT considered the following factors: whether the language used was of reasonable expectation or the language of contractual obligation, whether it imposed minimum commitment, whether there were

sanctions for not honouring the commitment, what the notice position was in respect of holidays, whether there was payment for services, and the position in respect of expenses, insurance indemnity and training.

14. At paragraph 21 of Grayson it was held that

“We cannot accept that the volunteer agreement imposed any such obligation. Like many similar charitable organisations, similarly dependent on the services of volunteers, the bureau provides training for its volunteers and expects of them in return a commitment to work for it, but the work expected of them is expressed to be voluntary, it is in fact unpaid and all that the volunteer agreement purports to do is to set out the bureau’s expectations of its volunteers. In our view, it is open to such a volunteer at any point, either with or without notice, to withdraw his or her services from the bureau, in which event we consider that the bureau would have no contractual remedy against him. We find that it follows that the advisers and other volunteers were not employed by the bureau within the meaning of the definition in section 68 of the 1995 Act.”

CLOSING SUBMISSIONS

15. I benefitted from written skeleton arguments from Counsel that appeared on both the second and third respondent respectively. And I heard oral closing argument from all parties involved. Although I do not repeat these submissions here, they were considered carefully in reaching the decision that I made.

FINDINGS OF FACT

I make the following findings of fact based on the balance of probability from the evidence I have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted me in making my findings of fact this is not indicative that no other evidence has been considered. My findings were based on all of the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why I made the findings that I did.

I do not make findings in relation to all matters in dispute but only on matters that I considered relevant to deciding on the issues currently before me.

16. In 2014, the third respondent was making cuts to local services, this included to the Fallowfield library. A charitable trust, with independent legal personality, was to be set up to run it, using volunteers.

17. The second respondent assisted the first respondent in the setting up of the entity for the purposes of running the library and assisted with putting in place the framework needed to engage volunteers. This resulted in documents created for volunteering opportunities for the second respondent being utilised for engaging volunteers for the first respondent. And, this included the first respondent making use of some of the second respondent’s processes, including the second respondent carrying out the initial induction of volunteers on behalf of the first respondent.

18. There was a service level agreement signed between the first respondent and the third respondent (see p.341). This laid down a requirement that there would always

be at least one volunteer available to work for all the advertised library working hours (see p.343). This led to the first respondent implementing a rostering system to ensure that there was always at least one volunteer available to work during opening hours.

19. The claimant signed a participant agreement on 20 February 2014 (see p.320). This was an agreement for the claimant to provide volunteering services to the library, through the first respondent. Although this is on a 'City South Manchester Housing Trust,' document (City South Manchester Housing Trust later became 'One Manchester Limited', the second respondent), the claimant was not signing an agreement to provide services for them. This document was simply used as the Trust/first respondent that was to maintain and run the library had at that point not been set up. The claimant's understanding when she signed this document was that she was signing this for a volunteering role at the library, through the first respondent.
20. The participant document uses the language of expectation rather than contractual obligation.
21. The participant agreement included a paragraph at the bottom of the document, which explained that the agreement was binding in honour and was not a legal contract. It further explained that the agreement could be cancelled at any time by the discretion of either party, without notice. It also explained that neither party intended to create an employment relationship. The claimant accepted under cross examination that she understood this at the time of signing the agreement. Under cross examination she accepted that she understood that the arrangement was binding in honour and trust only. And that she understood that there was no intention to create a binding legal contract.
22. The participant agreement did not lay down any commitment to work. The claimant and other volunteers were free to select what shifts they covered. The agreement allowed volunteers to simply give notice if they were unable to attend an agreed shift or if they were going to be late.
23. The claimant was regularly rostered to cover a shift on a Monday. Mr Willis would roster two volunteers for each shift, to ensure that the Service Level Agreement was complied with should a volunteer not be able to attend.
24. The claimant on numerous occasions was unable to attend a session she was due to attend. This included the session on Monday 18 November 2019 (see p.225). On this occasion the claimant emailed the first respondent to explain that she could not make the session the day before, and apologised. There were no sanctions imposed for missing this shift.
25. Likewise, the claimant was unable to attend at her shift on 26 January 2020 and 03 Feb 2020 (see p.226). the claimant simply gave notice that she was not able to attend. There was no requirement to explain the reasoning why she could not attend, nor were there any consequences for not being able to attend. And similarly on 05 October 2020 (see p.228).
26. The claimant would not be subject to any sanctions for not honouring the commitment she entered through the participant agreement.
27. The claimant was not entitled to holiday pay. She had no holiday entitlement. If she was wanting a 'holiday' she could simply request that she not be rostered to volunteer for the effected dates. However, this was not holiday leave in the legal

sense, but merely in line with the participant agreement of giving notice when the claimant was unable to attend. This would enable the first respondent to manage its volunteers and ensure that they always had a sufficient number of volunteers on a shift to comply with the Service Level Agreement.

28. The claimant was offered some training, around her volunteering role.
29. The claimant was not paid.
30. Although the claimant could claim back reasonable out of pocket expenses, she never did so.
31. The claimant was not entitled to sick pay in relation to sickness absences from any of the 3 respondents, and she never received it. The claimant was not required to follow any particular process, or submit a sick note if she was unable to attend a rota'd shift due to illness.
32. The claimant was provided with an induction. This was completed by 20 February 2014 (see p.312).
33. The claimant did complete registration forms (p.306), a self-disclosure form (p.309) and a data protection document (p.313). None of these documents support that the claimant entered a legally binding contract.

CONCLUSIONS

34. Having considered this matter carefully- I conclude that there is no legally binding contract of service or to personally do work between the claimant and any of the 3 respondents.
35. At its height, the claimant was afforded access to some training by the first respondent and was rostered regularly to provide cover on a Monday, again by the first respondent. The second and third respondent had no role to play in any of this. However, these two factors are not sufficient to support that the claimant had entered into any legally binding contract with any of the respondents.
36. The arrangement the claimant had with the first respondent was flexible. The claimant knew this and does not dispute this. There are numerous occasions where the claimant could not attend at the library at the time required, and simply sent an email to explain this, which included on one occasion after a rostered shift had taken place.
37. The contract lacks any form of consideration passing to the claimant. Nor did either party ever intend this to be creating legal relations. This is clear in the documentation. And it is clear in the evidence that I have heard, including from the claimant. Crucially, other than being binding in honour and trust, there was no contractual obligation placed on the claimant to actually do any work. It was a moral obligation at best. Nobody is questioning that the claimant once she gave her word that she would cover a particular shift then she would want to do so, but that does not reach the level of contractual obligation.
38. The claimant under cross examination herself accepted that she understood the relationship to be of volunteering, and that she understood this from the paragraph that was contained at the bottom of the participant agreement. The claimant also explained that she understood that there could be no sanction against her in

relation to the matters contained within the document.

39. At its height, the participant agreement lays down expectations. This does not contain any contractual obligations. There was no requirement to work any hours, the claimant was free to give up her time and work hours that she could commit to. A rostering system was merely used to ensure compliance with the service level agreement. There were no sanctions that could be applied against the claimant if she did not honour the participant agreement. There was no holiday entitlement. The claimant received no pay. The claimant could claim for expenses, but she never did. And any such expenses are not argued to go beyond actual expenses that would have been incurred. The claimant could have withdrawn from the agreement at any point, and again there would be no contractual remedy against her.
40. All the findings I have made point towards there being no such contract of service or contract to personally do work between the claimant and any of the 3 respondents.
41. In these circumstances I conclude that there was no contract of service between the claimant and the first respondent. And there was no contract to undertake work personally between the claimant and any of the three respondents.
42. It is because of that conclusion that the claims that the claimant brings are not within the jurisdiction of the Employment Tribunal. And thus, those claims are all dismissed. For the avoidance of doubt, all claims brought by the claimant in this case are dismissed.
43. Given my findings and the conclusion I have reached, it is not necessary to consider and determine those other matters that had been listed to be determined for this two-day listing.

Employment Judge **Mark Butler**
Date_13 July 2023_____

JUDGMENT & REASONS SENT TO THE PARTIES ON
21 July 2023

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