Case number: 2303229/2020

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE K ANDREWS**

BETWEEN:

Ms R Al Taweel **Claimant**

and

Stichting Female Journalists Network **Respondent**

ON: **11 May 2023**

RECONSIDERATION JUDGMENT

Further to the claimant's application for a reconsideration of the Judgment dated 30 August 2022 sent to the parties on 14 September 2022, that Judgment is confirmed.

REASONS

1. On 28 September 2022 the claimant applied for a reconsideration of the Judgment dated 30 August 2022. That Judgment found, in summary, that the claimant was an employee of the respondent for the period 1 January - 31 December 2019 only and accordingly her claims of unfair dismissal and breach of contract were dismissed.

2. By a letter dated 11 November 2022 the parties were advised that following my initial review of the application, it would proceed in part restricted to whether:
    a. the principle of Patel v Specsavers Optical Group Ltd (UKEAT/0286/18) was misconstrued and misapplied; and
    b. there was a failure to properly consider which of two possible employers of the claimant in 2020 was the correct one.

3. That reconsideration hearing was first listed for 6 February 2023 but had to be postponed due to Judge non-availability. Efforts were made to find an alternative convenient date but when it became clear this would result in significant delay (and given that there is also an appeal by the claimant pending), the parties agreed that the matter should be dealt with by written submissions only which were received from both parties' legal representatives in due course.

4. The power to reconsider is contained in rule 70 of the Employment Tribunal Rules 2013 which states:

> 'A Tribunal may, either on its own initiative … or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.'

Submissions

5. In summary the claimant's position is:
    a. The principle that an individual cannot have two employers in respect of the same work, confirmed in Patel, is correct. However when determining which of two possible employers is the correct one, the Tribunal should apply the familiar principles set out in case law from Ready Mixed Concrete (South East Limited) v Minister of Pensions and National Insurance ([1968] 1 QB 497) to Autoclenz Ltd v Belcher ([2011] ICR 1157 SC) – principles set out in the Judgment.
    b. That the analysis set out in the Judgment failed to apply those principles and if they are applied correctly, given the findings of fact made about the contractual position between the parties from 2018-2020 and that tax status is not determinative, the only proper conclusion is that the claimant was an employee of the respondent in 2020, not an employee of RouaT Ltd.
    c. To find otherwise leaves the claimant without an effective remedy and thus contrary to public policy.

6. In summary the respondent's position is:
    a. The contract (albeit oral) between RouaT Ltd and the respondent was on the part of both parties an informed and deliberate act and changed the existing contractual arrangement between them.
    b. The claimant's own evidence at the previous hearing was that in 2020 she was employed by RouaT Ltd and performed her role for the respondent as such.
    c. The Patel principle remains good law and is of broad application (recently confirmed by the EAT in Fire Brigade Union v Embery [2023] EAT 51). There is no good reason on the facts of this case to depart from it.
    d. Where a claimant argues that the written agreement or arrangements

with a respondent do not truly reflect the bargain between them, different issues arise namely what was the true bargain and with whom (the Autoclenz point). This is not what the claimant argued in this case.

Discussion & Conclusion

7. Mr Knezevic is correct that had it not been for the fact that in January 2020 the contractual arrangement between the parties was changed from being one between the claimant personally and the respondent, to the claimant as an employee of RouaT Ltd, my conclusion would have been that the claimant continued as an employee of the respondent until the termination of the relationship in April 2020.

8. He is also correct that case law supports the proposition that where there is any uncertainty as to the correct interpretation of the contractual position, the outcome should be as far as possible to reflect the reality on the ground.

9. On the facts of this case, however, there was not that uncertainty nor any need to consider imply any contract between the parties. There was a contract and one which reflected a conscious decision by both parties to change the identity of the contracting parties from 1 January 2020 and when making that decision the claimant had the benefit of advice from her accountant. The new arrangement suited her and there was no evidence that her agreement was made under anything approaching duress.

10. The new contractual arrangement did not represent any sort of sham arrangement and when she performed work in 2020 (for both the respondent and other parties) she did so as an employee of RouaT Ltd. It may well be that that meant she had no recourse in practice to employment law rights as she was unlikely, in effect, to sue herself (although RouaT Ltd could of course – in the right circumstances –pursue a civil claim against the respondent for any breach of contract). However, in summary - as was noted by HHJ Stacey in Patel itself (para 42), when quoting from HHJ Clark in Cairns v Visteon UK Ltd ([2007 ICR 616) - the fact that someone would have a better prospect of establishing a legal right against one entity than another is not a reason to depart from first principles.

11. I conclude therefore that the principle of Patel v Specsavers Optical Group Ltd (UKEAT/0286/18) was not misconstrued and misapplied in the Judgment and there was no failure to properly consider which of two possible employers of the claimant in 2020 was the correct one. The original decision that the claimant was employed by RouaT Ltd in 2020 and consequently could not be an employee of the respondent at the same time, was correct and is confirmed.

Next steps

12. Whatever the outcome of the pending appeal, the claimant has claims of discrimination that need to be progressed. In order to minimise further delay I have instructed that a 2-hour preliminary hearing is listed to make appropriate case management orders. It will be later this year but not before October and hopefully the appeal will have concluded by then.

Employment Judge K Andrews

Date: 11 May 2023