



# EMPLOYMENT TRIBUNALS

**Claimant:** TERESA WESTWOOD

**Respondents:** (1) ROBERT WOODHEAD LIMITED (in liquidation)  
(2) WOODHEAD ENTERPRISES LTD  
(3) ROBERT WOODHEAD HOLDINGS LIMITED  
(4) WOODHEAD REGENERATION LTD

**Heard at:** Nottingham

**On:** 10 August 2023

**Before:** Employment Judge Omambala KC

## **Representation**

Claimant: In person

Respondent: Mr. G Mahmood, Counsel

# RESERVED JUDGMENT

- (1) The Claimant was employed by First Respondent;***
- (2) The Claimant was not employed by the Second, Third or Fourth Respondents;***
- (3) The Claimant was not engaged as a worker by the Second, Third or Fourth Respondents;***
- (4) The Tribunal does not have jurisdiction to consider the claims against the Second, Third and/or Fourth Respondents, accordingly, those claims are dismissed.***

# REASONS

1. This was an open preliminary hearing to determine the correct identity of the Claimant's employer.
2. The Tribunal received an agreed bundle of documents and written witness statements from the Claimant and Ms. Cheshire on behalf of the Second to Fourth Respondents. Respondents' counsel produced a skeleton argument and a bundle of authorities. During the course of the hearing the parties produced a statement of agreed facts to assist the Tribunal.

3. The Tribunal heard oral evidence from the Claimant, who was supported by Ms. Thorp, acting as a Mackenzie friend, and from Ms. Hilary Cheshire, a non-executive director of all four Respondents and until her retirement in 2020 Company Secretary and Finance Director of all four Respondents. Ms. Cheshire was an employee of the Third Respondent but carried out work across the group of companies.
4. The Claimant commenced employment in 2002 as a personal assistant. She has worked in human resources focused roles and succeeded in obtaining several promotions. When her employment came to an end she was working as a Managing Director. It is not in dispute that the Claimant provided dedicated and loyal service throughout the course of her employment and worked across the four companies that made up the Woodhead Group.

### **Issues**

5. The issue for this Tribunal to determine is which of the four Respondents was the Claimant's employer for the purposes of the statutory claims that she seeks to bring.

### **The Parties**

6. The First Respondent, Robert Woodhead Ltd ("R1"), operated as a main contractor in the construction industry working with local authorities and other partners. Prior to its liquidation it was the largest business in the Woodhead Group with a turnover of approximately £50 million per annum and approximately 150 employees.
7. The Second Respondent, Woodhead Enterprise Ltd, ("R2") managed and serviced office and conference spaces at two locations known as Edwinstowe House and Boston Enterprise Centre. In September 2022 the Second Respondent had approximately 16 employees of whom 5 worked full time.
8. The Third Respondent, Robert Woodhead Holdings Ltd, ("R3") is the parent company of the Woodhead Group, holding assets and investments. It is agreed that it has not had any employees since 2020.
9. The Fourth Respondent, Woodhead Regeneration Ltd, ("R4") is engaged in the business of developing residential property for private sale. Its functions include sourcing land, forming joint ventures and managing pre-construction design and planning together with marketing for final sale. The Fourth Respondent placed orders with the First Respondent which then undertook the necessary construction work. In 2022 the Fourth Respondent had 9 employees.

### **Agreed Facts**

10. The following facts are agreed:
  1. It is agreed that the Claimant (C) started work on 19.8.02 for R1 initially as PA to Hilary Cheshire and David Woodhead. C later became HR Manager, then HR Director and later Managing Director in 2018.
  2. C's salary was paid by R1 throughout the course of her work for the Group.

3. C received an employment contract from R1 in or about October 2021, any preceding employment contracts were also issued by R1.
4. C never received an employment contract or payments from R2-R4.
5. C attended:
  - a. Holdings Meetings : All attendees are/were directors of the various companies.
  - b. Directors meetings: All attendees are/were directors of the various companies. Discussions, decisions were made in relation to R1, and the Group acted upon those.
  - c. Quarterly and annual meetings: Attended by the directors of the various companies and the management team for those companies.
  - d. Level 10 meetings: Attended weekly by the management teams of the businesses, including directors.
6. C was a statutory director of all four Respondent companies.
7. C was employed by R1, received benefits including pay from R1, and was given notice of termination by R1.

### **Findings of Fact**

11. In addition to the agreed facts, having heard oral evidence the Tribunal makes the following findings of fact:
  - 11.1 The statement of the particulars of main terms of employment provided to the Claimant provides inter alia:-
    - (i) at §1 the parties to the contract are the Claimant and R1, thereafter referred to as “the Company.”
    - (ii) at §3 the Claimant’s duties and responsibilities are stated to be for the management and supervision of the Woodhead Group’s business operations and day to day administration in accordance with the Companies Act.”
    - (iii) at §5a enable the Claimant to work from home, Head Office, or any operational site within the Woodhead Group to fulfil the duties set out within the Job Description.
    - (iv) at §9,13 the Company will provide the Claimant with specified benefits.
    - (v) at §11 the Company will enrol the Claimant in a specified health care plan.
    - (vi) at §18 six months’ notice of termination of employment to be given by the Company or the Claimant.
    - (vii) at §19 the Company reserves the right to place the Claimant on garden leave.

- (viii) at §20 restrictive covenants in respect of competition and recruitment seek to restrain in respect of activities undertaken by “this Company.”
- 11.2 The terms of employment set out in this document were accepted as binding and relied on by all parties to support their respective positions.
- 11.3 Upon the termination of her employment the Claimant received a P45 from R1. She did not receive a P45 from any other Respondent.

### The Law

12. Section 230(1) of the Employment Rights Act 1996 (“ERA”) defines an ‘employee’ as an individual who has entered into or works under (or where the employment has ceased, worked under) a ‘contract of employment.’
13. Section 230(2) of ERA provides that ‘a contract of employment’ means a contract of service or apprenticeship, whether express or implied, and if it is express, whether oral or in writing.’
14. Section 230(4) defines an employer in relation to an employee or worker as ‘the person by whom the employee or worker is (or where the employment has ceased, was) employed.’
15. The necessary conditions for the existence of a contract of employment were described in *Ready Mixed Concrete Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433 and have subsequently been endorsed on appeal. They are:-
- (i) the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master;
  - (ii) s/he agrees, expressly or impliedly, that in the performance of that service he will be subject to the other’s control in a sufficient degree to make that other master;
  - (iii) the other provisions of the contract are consistent with its being a contract of service.
16. In *Clark v Harney Westwood & Reigels* [2021] IRLR 534 the EAT distilled the following principles relevant to the issue of identifying whether a person is employed by B or C from the case law:
- a. Where the only relevant material to be considered is documentary, the question as to whether A is employed by B or C is a question of law.
  - b. However, where (as is likely to be the case in most disputes) there is a mixture of documents and facts to consider, the question is a mixed question of law and fact. This will require a consideration of all the relevant evidence.
  - c. Any written agreement drawn up at the inception of the relationship will be the starting point of any analysis of the question. The Tribunal will need to inquire whether that agreement truly reflects the intentions of the parties.

d. If the written agreement reflecting the true intentions of the parties points to B as the employer, then any assertion that C was the employer will require consideration of whether there was a change from B to C at any point, and if so, how? In determining whether B or C was the employer, it may be relevant to consider whether the parties seamlessly and consistently acted throughout the relationship as if the employer was B and not C, as this could amount to evidence of what was initially agreed.

17. The starting point to answering the question, 'who is the employer?' will be the contractual documents, if any.

### **Submissions**

18. The Claimant suggested that the nature and scope of the work she undertook for the other Respondents pointed to the existence of a contract of employment with R2 and R4. (She accepted that R3 was a holding company with no employees). Alternatively, she argued that a contract of employment with R2 or R4 should be inferred from the day to day working arrangements.
19. The Respondents argued that the Claimant was only ever employed by R1. Further, as a matter of law the Claimant could not be employed by more than one employer in respect of the same activities.

### **Conclusions**

20. The Claimant does not suggest that the statement of terms and conditions of employment document which she received was a sham or fails to represent the terms of the written agreement between herself and R1. Its terms are clear and indicate that, as a matter of law the Claimant was employed by R1. Accordingly, this Tribunal is bound to find that the Claimant was employed by R1.
21. If the Tribunal were required to conduct a wider enquiry considering subsequent actions and oral evidence, it would still arrive at the conclusion that the Claimant was employed by R1.
22. The Claimant accepted in evidence that the terms and conditions document truly reflected the intention of the parties at the time that it was entered into and reflected the practical reality of her day to day working.
23. The Claimant did not assert that the position changed over time. She told the Tribunal that there was some discussion about her employment transferring to R4 about two years ago but that nothing came of it because at the time of the discussion such an arrangement was not financially viable. The Claimant was clear and candid in her evidence. She told the Tribunal that she simply got on with her work of trying to bring success to the Group.
24. The evidence before the Tribunal is that the arrangement between the Claimant and the various Respondents did not change over time. The Claimant was employed by R1 and did work for all Respondents pursuant to the express provisions of her terms and conditions of employment.

25. The work which the Claimant did as a statutory director was not inconsistent with the existence of a contract of employment with R1.
26. This Tribunal is bound by decisions of the higher courts which make clear that an employee cannot simultaneously have two employers. It is bound to find that the Claimant was not also employed by R2-R4.
27. For these reasons the claims of unfair and wrongful dismissal, unlawful deductions from wages, failure to consult and failure to pay holiday accrued but untaken holiday which arise from her employment by R1 must be dismissed against R2-R4. They did not employ the Claimant and the Tribunal has no jurisdiction to consider those complaints.
28. The Claimant's claims against R1 can continue to be pursued. This claim should be consolidated with the other claims against R1.

Employment Judge Omambala KC

---

Date 10 August 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....  
.....  
FOR EMPLOYMENT TRIBUNALS