



EMPLOYMENT TRIBUNALS

Claimant: Ms P Mills

Respondent: Phoenix Social Enterprise Ltd

Heard at: Bristol by CVP

On: 2 November 2023

Before: Employment Judge Christensen

Representation

Claimant: represented by Ms K Angus, a friend

Respondent: represented by Mr Mahmood of Peninsula

RESERVED JUDGMENT

1. The claimant was not, at the relevant time, an employee of the respondent within the meaning of S230(3)(a) of the Employment Rights Act.
2. The claimant was, at the relevant time, a worker of the respondent within the meaning of S230(3)(b) of the Employment Rights Act.
3. The claims for Unfair Dismissal and Breach of Contract are dismissed.
4. A one day hearing will now be listed to determine the claimant's claims of unlawful deductions from wages, accrued but untaken holiday pay, failure to provide written statement of particulars and failure to provide itemized pay slips.

REASONS

Background

1. The issue before me today is to determine the claimant's employment status at the time that she worked for the respondent as set out in paragraph 67 of the Order of Judge Hastie dated 21 June 2023.
2. It is agreed that the claimant worked for the respondent during a period commencing on 3 May 2022 and ending on 4 July 2022 as Project Manager. The claimant's case is that she was an employee during this period. The respondent's case is that she was neither an employee nor a worker during the period and was instead self-employed.

3. I had a witness statement from the claimant. For the respondent I had a witness statement from Mrs Williams-McLarty, CEO of the Respondent and from Mr McLarty the Operations Manager for the Respondent. The following are my findings of fact.
4. Mr McLarty was employed to manage the building within which the respondent operated. This included ensuring all repairs were done such as replacing broken windows and damaged doors and painting and decorating. Mr McLarty had no involvement in the operational side of the respondent's business and had no involvement in the recruitment of or management of any staff or consultants/freelancers who were appointed to work on the various projects undertaken by the respondent. That responsibility lay with Mrs Williams McLarty.

The respondent

5. The respondent is a Social Enterprise Company that has been in existence for 35 years. It is a company limited by guarantee and has charitable status. It has a Board of 5 Directors who provide their services as volunteers. The CEO reports to the Board. The Board has a number of sub-committees including HR Enterprise and Complaints sub-committees. Its annual income is a little over £500,000. It derives its income from sub-letting some of its office to other organizations and from income derived from running training and employment projects funded by governments or partnerships.
6. The evidence from Mrs Williams McLarty was that the respondent currently has 4 employees. On her evidence, those are herself and her husband, Mr McLarty, and in addition two part-time Project Managers.
7. The claimant was appointed to replace a previous Project Manager who, on the evidence of Mrs Williams McLarty had started work for the respondent on a self employed basis and had then become an employee. He had been dismissed by the respondent because of some safeguarding issues.

Projects

8. The respondent utilizes the two Project Managers it describes as being employees to manage the following projects (i) a consortium funded project relating to English as an additional language (ii) a project focusing on European Programmes including disability, sports and placements.

Chimes Project

9. The claimant was appointed by the respondent to work on the Chimes Project. At the time of her appointment Chimes had about 6-8 months left on its project period. The previous Project Manager had unexpectedly been dismissed by the respondent when some safeguarding issues arose. The CEO needed someone to start at short notice to take over the project and run for the remainder of the project period.

Respondent's approach to different types of workers and contract documentation

10. From the evidence of the CEO, I am satisfied that the respondent had a flexible and casual approach to the question of what the correct status of its workers were. It was the CEO's responsibility to follow due process to

hire all programme based contractors and employees. She was accountable to her Board of Directors and the HR Sub Committee, if seeking to appoint an employee. Her evidence was that she did not need to do so when appointing a freelancer/contractor.

11. I describe their approach as flexible/casual on the basis of the evidence of Mrs Williams McLarty in relation to the claimant's predecessor. Mrs Williams McLarty's evidence was the claimant's predecessor had started working for the respondent on a freelance/self-employed basis on the Chimes project. When he started, on her evidence, he was not an employee and was given no contractual documentation. Her evidence was that once he had shown that he was good at delivering, he was appointed as an employee. He took over some other projects and on her evidence then became an employee and was given a Contract of Employment. I have not been provided with an example of any Contract of Employment, or any other documentation, given by the respondent to any of the individuals it describes as employees.
12. I describe the approach as casual also on the basis of the evidence of Mrs Williams McLarty in relation to the documentation that the respondent provided to individuals described as freelancers or self-employed. When I asked her what paperwork was given to a freelancer her response was *'not very much paperwork, Meet and talk about the project and find out if they had the skills to deliver. Then agree the information around the project'*. She further described that she would give the freelancer the project brief and leave them to deliver it. I find that that correctly reflects what happened when she appointed the claimant work on the Chimes Project.

Terminology

13. Through the oral evidence and in the documentation there is variably reference to terms including self employed, employer, contractor, employed, contract of employment, freelancer. I reflect the various uses of the terms as they arise but do not do so in any determinative sense. My determination of the issues, set out below, explain how I have determined the correct employment status of the claimant based on all the evidence before me.

Chimes Programme

14. The respondent is one of 6 European based partners in a programme funded by the European Commission. Those countries are: UK, Ireland, Italy, Spain, Bulgaria and Portugal. It is called EPPSi and is based in the Republic of Ireland. The claimant was appointed to take over the final months of Project Managing the final outputs on the Chimes Project following the unexpected departure of the previous Project Manager.
15. The claimant seeks to rely upon an email sent by Bert Pelzer, Project Manager of EPPSi dated 19 April 2021 [p58] to support her contention that she was an employee of the respondent. Mrs Williams McLarty's witness statement refers to this email (para 14 of her witness statement) as being sent on 23 May 2022 although it refers to the document at p 58 and is therefore understood to be a mistake.

16. The email from Mr Pelzer refers to the necessity for all partners to ensure that the time sheets required by the European Commission. It makes a reference to pro rating full time working hours established by law or collective agreements, rounding working days up or down, the importance of recording for each staff member on each output and the necessity to provide Mr Pelzer with the contract of the staff members that had worked on each output.
17. These are the time sheets completed by the Claimant and appear in the bundle.

The claimant

18. The claimant had met Mrs Williams McLarty in or around 2020 when she had worked as a Project Manager for a different organization that was based in the Phoenix office building. They had become friendly and stayed in contact by WhatsApp.
19. When the Chimes Project Manager was dismissed by the respondent, Mrs Williams McLarty needed someone at short notice. She contacted the claimant by WhatsApp – *“got a job for you if you are interested will call you later to arrange a time to come in to discuss”*. At that time the claimant was unemployed and trying to find work that would give her a monthly net income of £1800. She was also a singer in a band. The claimant was at that time being supported by Smart Works a charity that helps women get back to work. The claimant was required to send Smart Works any documentation sent to her in the event of being successful in finding work.

Conflicts and credibility

20. There are a number of stark conflicts between the claimant and the respondent regarding what was said at the interview, what was agreed at the interview, what documents were sent after the interview and the reality of the working relationship that was then created in the 2 months that the claimant worked for the respondent. The determination of the issues before me requires careful fact finding on these issues to address the various legal tests relevant to the determination of the claimant’s employment status.
21. This has not been assisted by the respondent’s representative, Mr Mahmood, informing me that the respondent may have sent Peninsula some documents that do not appear in the bundle because this matter had previously been handled by a different representative within Peninsula. That is far from satisfactory in terms of assisting the tribunal and I therefore record it in my judgment.
22. In general terms when considering credibility, as between the claimant and Mrs Williams McLarty, I conclude neither of them are entirely credible. My fact finding is therefore not based on an overall view of who is telling the whole truth but instead on a careful analysis of all factors in the evidence before me that are relevant.

The interview

23. The claimant attended an interview with Mrs Williams McLarty. The claimant says this took place on 2 May 2022 and the respondent says that after a telephone conversation it was arranged for 3 May. I prefer the evidence of the respondent in this regard as Mrs Williams McLarty produced minutes of the meeting and these record it as taking place on 3 May.
24. The minutes record the elements that Mrs Williams McLarty would need to have discussed with the claimant to appoint her to the role of Project Manager. They also record some of the concerns raised by the claimant relating to the minimum that she needed to earn. They however do not record other matters that I find were discussed, such as the claimant's employment status and the claimant's concern at the administrative responsibility of being appointed on a self-employed/freelance basis. Although not recorded in the minutes I am satisfied from the claimant's oral evidence and find that the claimant expressed to Mrs Williams McLarty her concerns about the administrative responsibility of being appointed on a self-employed basis.
25. The claimant's recollection of the interview is not entirely credible. I reach this conclusion regarding the claimant as her evidence was that she left the interview believing that the respondent was going to meet her salary expectation of the £1800 (net) per month that she was seeking. The claimant's oral evidence was that Mrs Williams McLarty had told her in the interview that the Chimes project could not meet that figure but that the respondent would "*work something out*" and meet it from other projects that it was running. As an experienced Project Manager, the claimant has provided no proper basis on which it would be possible for her to have left the interview believing that and it therefore seems proper to conclude that this evidence is not reliable or credible. The claimant also conceded in her oral evidence that she had **not** been promised anything beyond the money available on the Chimes project. This is an example of inconsistency in the claimant's evidence.
26. The respondent's evidence is that they sent the claimant a copy of these minutes after the interview. The claimant's evidence is that they were never sent to her and are, in any event, inaccurate in terms of what they record. In this regard I prefer the evidence of the claimant regarding whether the minutes were sent to her. I find that the minutes were never sent to her. It is the failure by the respondent to have created any written record of the agreement, and then to have sent that to the claimant, that has contributed to some of the conflicts, misunderstanding and confusions that have arisen. It is consistent with the casual approach of the respondent to the paper trail created by them when appointing new members of staff. It is also consistent with the minutes themselves which record a number of action points for the respondent and these do not include that the claimant will be sent a copy of the minutes.
27. From the evidence before me I find that agreement was reached between the claimant and respondent that the claimant was appointed on the basis that (a) she would be a Project Manager on Chimes (b) a day rate would be paid for each day that she worked on the project (c) she would need to complete time sheets to record the days spent on the Chimes project and would be paid on a monthly basis (d) that the

respondent would consider her for further projects in due course (e) the project was EU funded and needed a PM to deliver the final phase of project over the next 6/7 months (f) the claimant would be responsible for the setting up of workshops, the recruitment of young people and arts practitioners to run the workshops and to collect and monitor the outcomes and run an event/exhibition (g) the respondent would send the claimant a copy of the Chimes plan, the time sheet, Chimes flyers and Project Dissemination plan.

28. There was however no agreement arising from that meeting, regarding the amount of days that would be worked nor indeed the nature of the working relationship that was being created. Nothing was sent to the claimant after the interview by the respondent confirming the basis of appointment nor confirming what her employment status was intended to be. The parties have different accounts of the nature working relationship that was created. The respondent's account being that she was appointed on a freelance/self-employed basis and the claimant's account being that she was appointed as an employee.
29. My determination of employment status is therefore based on the reality of the working relationship that existed in the 2 months that the claimant worked for the respondent.

Meeting 11 May 2022

30. The claimant confirmed that she was interested in proceeding. There was no discussion regarding the basis on which she was being appointed. She enquired further on the recruitment of young people and arts practitioners and asked for copies of previous leaflets and publications. Mrs Williams McLarty agreed to provide the claimant with a list of contacts and organizations that would assist the claimant in completing the relevant outputs and examples of prior flyers and publicity materials.
31. During the meeting Mrs McLarty Williams told the claimant that *'time is not on our side therefore you need to set all these actions to a timescale and monitor closely'*.
32. There was a discussion in which the claimant asked what the situation was regarding the payment of tax and national insurance. No clear answer was provided.

The disputed offer letter

33. The claimant's evidence is that after the interview she chased Mrs Williams McLarty for a letter confirming the interview invitation and offer confirmation letters. This is because she needed this for Smart Works, who were supporting her to find work. Her evidence is that on 13 May 2022 Mrs Williams McLarty emailed her and sent her a draft template letter for her to complete [p56]. The claimant's evidence is that the draft sent to her appears at p57 and the document at p60 is the offer letter sent to her based on the template.
34. Mrs Williams McLarty says that the email appearing at p 56 was not sent by the respondent to the claimant. Her evidence was that any email sent by her in her capacity as CEO either had a footer on it with the respondent's logo and also includes her title as CEO or, is sent from her

mobile phone said so on the face of the email. This is consistent with other emails from her that appear in the bundle. The email at p56 has neither of these appearing on the base of the email. This tends to support the respondent's account that the documents were not created by or sent by the respondent.

35. Mrs Williams McLarty's evidence is that the offer letter appearing at p60 was not sent by the respondent to the claimant. Her evidence is that any letter sent by the respondent has the company logo on the bottom.
36. I resolve this conflict in favour of the respondent. I find that the emails and letters appearing at pages 56, 57 and 60 were not sent by the respondent to the claimant.
37. When considering the substance of what is written in the letter at p60, it is simply not credible that that letter was sent by the respondent to the claimant. The letter states that the claimant would 'report directly to Clement McLarty Operations Director', and purports to be signed by Mr McLarty as Operations Director. This is manifestly incorrect.
38. Mr McLarty had no involvement in the operational side of the respondent's business and was not involved in the recruitment or management of Project Managers, it is simply not credible that the respondent sent this letter to the claimant in the terms set out in the letter. His role as Operations Manager was limited to maintaining the building in the ways already set out; he had no involvement in the recruitment of or management of Project staff.
39. It is also not believable that the letter was written by the respondent to the claimant on the basis of the start date contained in the letter which it is agreed by both parties, does not reflect the date on which the claimant in fact started work for the respondent.
40. I conclude that the letter has been created by the claimant to assist her in the requirement to provide paperwork to Smart Works given Mrs McLarty Williams's failure to have sent her anything after the interview, despite reminders to do so.
41. Although I have made findings regarding the origins of the letter, its contents do not assist in the issue of determining the nature of the claimant's employment relationship. It simply refers "*Phoenix Social Enterprise is delighted to offer you the part-time position of Project Manager with an anticipated date of Monday 13 June...you will report directly to Clement McLarty Operations Manager....please complete the new starter booklet and return via email*"

Timesheet

42. The claimant was sent a copy of a blank timesheet [p61] and the dissemination plan on 23 May by Mrs Williams McLarty. The timesheet is in a format proscribed by the EU funders and is provided to all 6 partner organizations across Europe who were funded by Chimes. The respondent had no ability to change any of the terms within or format of the timesheet.

43. The claimant's case is that the timesheet assists in establishing that she was an employee as it uses the word 'employee' within it. It had columns headed 'first name of employee', 'last name of employee'. I do not regard this fact as having any particular influence in my determination of the claimant's employment status as the document was not created by the respondent. It was one they were required to use by their EU funders and could not alter it. It seems proper to conclude that its wording is broad enough to cover the employment relationships set up by the various 6 partner countries, with staff appointed by them.
44. The focus of my fact finding therefore returns to the reality of the working relationship.

The reality of the working relationship

45. The claimant started work on the Chimes project. She was free to work from the respondent's office base or from home. At the office base she was set up with a computer that had access to the respondent's various networks and was also able to access a work based email address assigned to her. When she worked from home she used her own computer and software and her personal email address and could not access the respondent's internal networks.
46. The claimant was given no guidance or direction by Mrs Williams McLarty regarding the completion of her tasks beyond examples of previous work done by her predecessor. She was provided with contact details of and links to the various partners the respondent worked with who may be able to assist her to complete the final output on the Chimes programme. Beyond that she was left to her own devices regarding how she delivered the outputs with the information she had been given.
47. The claimant and Mrs McLarty Williams communicated by WhatsApp messages. The claimant attended the offices on some occasions and when she did, she utilized the respondent's desk and computer. When the claimant attended the office she tended to WhatsApp Mrs Williams McLarty to tell her that she would be in the office. As an example at p88 there is a message exchange on 26 May in which the claimant tells Mrs Williams McLarty 'morning Babs I'll be working from home until this afternoon. Doing some reading of the intellectual outputs etc. I'll be in between 12.00 and 13.00'. Mrs Williams McLarty was rarely in the office when the claimant attended. This message satisfies me that the claimant had complete freedom regarding where and when she worked and was not under the direction or management of the respondent in this regard.

Payment for May

48. On 24 May Mrs Williams McLarty messaged the claimant and asked her to send her timesheet to date so she could pay the claimant [p88]. The claimant explained to Mrs Williams McLarty that she was struggling financially and that she was not able to complete the timesheet on her home computer. It was agreed that the respondent would pay the claimant an advance payment in May to assist with her finances on the basis of 5 days work and even though she had not completed a time sheet. On that basis Mrs Williams McLarty authorized a payment to the claimant of $5 \times \text{£}238 = \text{£}1,193.00$. Mrs Williams McLarty did that to assist

the claimant. The claimant was not provided with any formal record of having been paid.

Claimant's work in June

49. Mrs Williams McLarty became dissatisfied with the work that the claimant was producing.
50. Mrs Williams McLarty sent an email to the claimant's work email address on 9 June at 12.54. Her June timesheet [p63] shows that the claimant was in the office for 3.45 hours on that date. The claimant's case is that she has never seen this email. Although I accept her evidence in this regard I am also satisfied that the email was sent, as described, by Mrs Williams McLarty. I accept the claimant's evidence that she had never seen the email before on the basis that it seems plausible that she may not have accessed her work email address on the 9 June or, if she did, that she did not access it when the email was sent or thereafter. The claimant used her personal email more than her work email and only used her work email when she needed to in the office. I am satisfied that the email was sent as it is consistent with messages sent to the claimant on 12 June, which the claimant accepts she did receive. It seems inherently unlikely however that, if the claimant had read the email, she would not have responded to address the concerns raised by the respondent.
51. The respondent's case is that the claimant did respond by email on 9 June at 16.38 [p66] asking for a meeting to discuss the contents of the email. The claimant's case is that she did not send that email. It was sent from the claimant's work email address and to the same work email address. Had the claimant responded to Mrs McLarty's email it seems inherently unlikely that she would have made the mistake of sending an email to herself. That is difficult to do when responding to an email. I am satisfied that that email was not sent by the claimant.
52. The 12.54 email of 9 June to the claimant refers to concerns that the claimant's performance has deteriorated to the extent that it is "*no longer acceptable or tolerable*". It lists 8 points of dissatisfaction.
53. One of these related to the production of publicity material. The claimant had produced a promotional leaflet using software on her home computer. Mrs Williams McLarty was not satisfied with its quality. Mrs Williams McLarty's concerns about the claimant's work were discussed on 12 June with the claimant and are reflected in a WhatsApp message to the claimant on 13 June [p90]. It states "*Was a little confused about the direction of Chimes after talking with you yesterday. To ensure we are on the same page can I see: 1. The literature you sent to organizations informing them about the project; 2. Can I have a workshop proposal for the training you intend to deliver; 3. Can you give me an update on where you are in organizing the event and the exhibition. The above will enable me to assess more accurately where we are as we will be expected to report to the wider partnership on 21/6*"
54. Later the same day she messaged the claimant again "*please note that all information about the program that is sent out to the public must be highly polished and corporate. 1. The look and feel of the program is what attracts creative arts practitioners and young people to participate; 2. The*

message on the flyers must be simple and easy to read; 3. We must tell young people what they will get out of the project” Mrs Williams McLarty told the claimant that she would find another way of completing the flyer and took this piece of work away from her.

55. The claimant’s performance was however satisfactory to the extent that Mrs Williams McLarty messaged the claimant on 21 June [p93] *“hi Paulett, thanks for today. You did well. Hope it was a pleasant experience”*. This refers to attendance at a meeting with the other partners that took place on that date. The claimant’s timesheet for June shows 10 hours charged to the respondent for that meeting.

June timesheet

56. The claimant emailed Mrs Williams McLarty her June time sheet on 24 June which reflected approximately a further 5 days work in June. That this was sent, is corroborated by the WhatsApp message of that date at p93 although the bundle does not contain the email.
57. As in May, the claimant asked to be paid on the same day as *“I’ve got no money”*
58. Mrs Williams McLarty responded and explained that payment would need to wait as her husband was attending a funeral.

The promise of a written ‘contract’

59. Mrs Williams McLarty messaged the claimant on 29 June and told her that the respondent *“will also begin drafting a contract for you for the remaining period”* By this stage the claimant had still not been paid.
60. I can make no findings regarding what sort of a contract Mrs Williams McLarty had in mind for the claimant or indeed why she was told one was being drafted for her at this stage. I consider it relevant that one of the preconditions of Chimes funding, as set out by Mr Pelzer in his email in April 2021 [p58], was that each partner draw up a contract for each staff member working on the project. On that basis I am satisfied that Mrs Williams McLarty was required to draft something to satisfy this condition, however no such documentation has been provided to the tribunal. No contract was ever sent to the claimant.

Email 1 July

61. Mrs Williams McLarty emailed the claimant on 1 July and explained that the respondent could not pay her June timesheet as presented. She gave an example of why; namely the 10 hours claimed by the claimant for attendance at the partners meeting on 21 June. She sets out that the meeting in fact lasted for 7 hours in accordance with the agenda. She explained that the claimant could not claim for anything beyond that, such as time spent socializing in the evening as that is not included in the budget allocation.
62. She goes into some detail on how the timesheet needs to be reworked. The respondent has not paid the claimant any money by reference to her work in June.

Contract terminated

63. It is agreed between the parties that the respondent terminated the claimant's services to the respondent on 4 July. I am unable to make any findings regarding the circumstances of the termination as there is no documentation in the bundle and no evidence was given by either party on this point beyond that Mrs Williams McLarty's statement provides at paragraph 30 "*the claimant continued delivering poorly on the allocated tasks and we terminated her services on 4 July 2022*"

Substitution

64. Part of the respondent's case is that the claimant was not required to provide personal service and could provide a substitute to carry out her tasks. The evidence of Mrs Williams McLarty (para 17) is that the claimant could allocate tasks to other persons or companies.
65. The evidence before me does not support such a finding. I find that the claimant was required to provide personal service qua Project Manager and could not appoint a substitute to undertake her duties as in this regard.
66. Mrs Williams McLarty gave evidence that the claimant had given some of her work to someone called Edson. However I find that she did not do so and instead met with Edson, as part of her work as Project Manager, to discuss how she could achieve the outputs on the projects as Project Manager and charged the respondent for 2 hours of her time for doing so. Mrs Williams McLarty also gave evidence that the claimant got her son to complete some of her tasks. I find that she did not do so and instead discussed the possibility of recruiting her son as one of the Young People needed on the project.
67. Another example relied upon by the respondent to establish that the claimant was not required to provide personal service relates to enquiries she made of a studio to assist participants in completing their videos. The claimant understood from her discussion with Mrs Williams McLarty that as Project Manager she could seek to use 3rd parties to assist in the delivery of outputs on the basis that the respondent had a budget to pay for any such cost. She understood that if she wished to use a 3rd party in this way she would need to seek the agreement of Mrs Williams McLarty to any such costing. In fact the respondent did not authorize the use of this 3rd party nor the payment of any money to them.
68. None of these examples establish that the claimant could provide a substitute for her services as Project Manager.

Closing Submission

Respondent

69. The respondent provided me with a bundle of authorities addressing the tests relevant to the issue of whether an individual provides service as a worker, employee or on a self-employed basis. These provide useful guidance to the issues before me.
70. The cases referred to by the respondent are *Ready Mixed Concrete-v-Minister of Pensions*, *Express & Echo-v-Tanton*, *MacFarlane-v-Glasgow City Council*, *Staffordshire Sentinel Newspapers-v-Potter*, *Autoclenz-v-*

71. The respondent submits that the claimant was neither an employer or worker in accordance with S230 and was instead self-employed. The respondent submits that there was insufficient control or integration into the workplace, not mutuality of obligation and that in any event the overall picture was one of an individual who was not employed. The respondent submits that there was no obligation for the claimant to provide personal service.

Claimant

72. The claimant submits that she was an employee of the respondent. The claimant submits that the wording of the timesheet is relevant as it refers to 'employee'. The claimant submits that an element of autonomy in performing tasks does not indicate that someone is self employed and further that the claimant was not able to substitute anyone to perform her tasks and never sought to do so. The claimant submits that she could seek assistance from elsewhere to perform her tasks as Project Manager.

Determination of Issues

Was the claimant an employee of the respondent within the meaning of S230(3)(a)?

73. My determination of this issue is that the claimant did not work under a contract of employment and was therefore, not an employee of the respondent.

Was the claimant a worker of the respondent within the meaning of S230(3)(b)?

74. My determination of this issue is that the claimant was a worker; she worked under a contract whereby she undertook to perform personally work or services for the respondent and her status was not that of a profession or business undertaking carried on by the claimant.

75. The following factors are relevant.

Intention of the parties

76. I am satisfied from my findings that there was no agreement reached during the meetings of 3 May and 11 May regarding the nature of the claimant's employment. The minutes of the meeting are not an entirely accurate record of the discussion between the parties. Both parties were focused on getting the claimant working as soon as possible.

77. I am satisfied that the claimant's focus was to find work and that she did not wish to be classified as self-employed because of the additional administrative burden involved. The claimant voiced those concerns to Mrs Williams McLarty in discussion in the meeting on 3 May.

78. Mrs Williams McLarty was focused on getting a replacement for the Project Manager who had just been dismissed. He had, on her evidence, been an employee. She had a flexible and casual approach to the significance of employment status but knew that if she did not appoint someone as an 'employee' she could do so more quickly and without the

involvement of the HR Sub Committee. There was pressure on the respondent to deliver on the Chimes project. Mrs Williams McLarty was therefore focused primarily on getting the claimant into post as quickly as possible without giving due consideration, as was her responsibility, to the importance of properly agreeing and recording the nature of the appointment.

79. I therefore go on to consider the reality of how the contract in fact operated to determine the issue before me.

Control & Integration

80. The claimant was largely autonomous in terms of the way in which she delivered the work as Project Manager. The respondent gave her details of the outputs required under the Chimes project, the timescale for delivery, examples of work already done and an expectation to complete a time sheet to show the work done. Thereafter she was left to deliver the outputs in whatever way she determined.
81. Mrs Williams McLarty gave the claimant no management direction regarding how, when or where to complete her work as a Project Manager and did not, as the claimant argues, line manage her. Instead I am satisfied that she gave the claimant details of the project and outputs that needed to be delivered, access to contacts and networks to enable her to do so but nothing else. She gave her an example of a flyer to assist her to complete one herself but did not direct in how to do so. Mrs Williams McLarty was not content with the quality of the work that the claimant had done on the flyer but did not seek to influence how, when or where she performed that work at the point that she did.
82. The claimant completed each of the tasks listed in her time sheets as she saw fit and did not complete them under direction of control of Mrs Williams McLarty. The claimant attended the respondent's office on occasions but only when she decided to and not under any direction from the respondent. She notified the respondent when she was coming into the office but did not seek permission to do so. She was provided with access to a work computer that she could use when in the office and a work based email address. She used this email infrequently as she could not access it from her personal computer.
83. I am satisfied that the claimant had a poor understanding of how to complete those tasks and struggled to do so. That is not a criticism of the claimant but instead a reflection of the lack of clarity created by Mrs Williams McLarty in terms of her management of the appointment of the claimant.
84. My findings reflect the casual attitude adopted by Mrs Williams McLarty regarding the employment status of those that worked within the respondent organization.
85. The claimant could work when and where she wanted to. There was no expectation on her to attend the office. She chose to do so periodically. When she did so she could access a work computer and email address but otherwise used her personal computer and personal email address to

perform her work. She used her personal computer and software to complete the flyer.

86. There were other Project Managers that worked within the respondent organization. The claimant was never introduced to them, never met any of them and did not work in any sense with them. She was not subject to any disciplinary or grievance procedures and was not given a pay slip or any other documentation to record the payment to her in May. She was not subject to any policies operated by the claimant.
87. The claimant could seek to appoint third parties to assist with the completion of the outputs but in the event that she did, needed to seek the prior approval of the respondent to the appointment and the payment of their fees.
88. The claimant did not agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to one of master and servant. She agreed to provide her own skill and work in return for payment for time spent.
89. When standing back and considering the facts as a whole, I am satisfied that there is no other factor that would make the contract consistent with a contract of service.
90. The claimant has submitted that it is relevant that she was promised a contact by Mrs Williams McLarty on 29 June. However, in my judgment that fact does not assist as the offer of a contract says nothing about what the contract was for. The offering of a contract appears unusual at the stage that it was offered in that it was offered shortly after Mrs Williams McLarty had expressed dissatisfaction with the claimant's performance and shortly before the contract was terminated. If a contract was ever drawn up by Mrs Williams McLarty that could be consistent with her obligations under the Chimes funding but in any event no such contract has been disclosed or produced in the bundle.
91. I do not consider the use of the word 'employee' on the time sheets completed by the claimant to indicate that she was an employee of the respondent. That form was not drafted by the respondent and was one drafted for use by project partners spread over 6 countries. It's language is therefore likely to be broad enough to cover whatever local situation existed in each of those countries but is not an indication that the respondent intended the claimant to be an employee or that, in fact, she was such.

Economic Reality

92. The claimant did not perform services as a Project Manager for any other party during the period she worked for the respondent although she was free to do so. She was also a singer in a band. She was otherwise unemployed and in financial difficulty at the time that Mrs Williams McLarty approached her to assist with Chimes. She used her own equipment and software to undertake the tasks required of her as a Project Manager. She used her own initiative to make contact with individuals such as Edson to further the objectives of the project and did not do so under the

direction of the respondent. She charged the respondent time for undertaking all of these tasks and did not seek any sort of permission or authority to do so. She simply sought to be paid for the time that she had spent seeking to achieve the project outputs.

Mutuality of Obligation

93. There was no obligation on the respondent to provide the claimant with work. Instead it was for the claimant to deliver the outputs on the Chimes project in accordance with the information that she had been provided and in accordance with her own skills and abilities, she was not directed in how to do so. The respondent's obligation was then to pay the claimant for the time she spent on the outputs and in accordance with her time sheets.

Personal Service/Substitution

94. The claimant was expected to deliver her services as a Project Manager personally and had no express or implied authority to appoint a substitute. In fact she never did appoint a substitute.

95. In the event that she determined that a 3rd party was needed to assist with the completion of any part of the outputs, she needed the permission of Mrs Williams McLarty to do so and to pay the fees of that 3rd party. On the one occasion that the claimant sought to do so, Mrs Williams McLarty did not give her permission.

The issues

96. Claims for Unfair Dismissal and Breach of Contract are dismissed as those may only be pursued by employees.

97. The claimant may proceed with the following claims identified in the Order of Judge Hastie: (1) unlawful deductions from wages (2) accrued but untaken holiday pay (3) failure to provide written statement of particulars and (4) failure to provide itemized pay slips.

Employment Judge Christensen
Date 16 November 2023

Reserved Judgment & reasons sent to the Parties on 07 December 2023

For the Tribunals Office