



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Nagra

**Respondent:** Supply Chain Coordination Limited (1)  
Unipart Group Limited (2)

**Heard at: Birmingham Employment Tribunal remotely by video on: 10 and 11.08.2023.**

**Before: Judge L Mensah**

### Representation

**Claimant:** In person  
**Respondent:** Mr Webster (Counsel) for R (1)  
Mr Willey (Solicitor) for R (2)

Observing: Mr Jake Colbourne (para-legal)  
Mr Andrew Jones (Business Partner) R (2)  
Ms Abigail Hunt (Solicitor) R (1)

#### Witnesses

Mr Paul Webster (Executive Director for Governance, Assurance and Legal for R 1)  
Ms Helen Timpson, (Customer Services & Home Delivery Director for R2)

## Judgment

1. The Tribunal decided,

- (i) The Unfair Dismissal claim/s as against the First Respondent is not well founded and is dismissed. The Claimant was not an employee of the First Respondent at any time.
- (ii) All claims for direct sex discrimination/harassment and equal pay discrimination under the Equality Act 2010 against the First Respondent are not well founded and are dismissed because,

(i) The Claimant was not an employee, under a contract of apprenticeship or a contract personally to do any work for the First Respondent as required by Section 83((2)(a) Equality act 2010 and,

(ii) The First Respondent were not a Principal as required by section 41(5) Equality Act 2010, as they did not make work available to the Claimant and the Claimant has not shown he was employed by another or that he was supplied by them as an employee in furtherance of a contract to which the First Respondent was a party (whether or not the employer is a party). There being no employer on the facts.

2. By virtue of the above,

(i) All claims against the Second Respondent, as alleged agent for the First Respondent are not well founded and are dismissed because the Claimant has not shown the Second Respondent were acting as agents for the First Respondent, and he does not plead any claim against the Second Respondent as a contract worker because he denies any contract with the agency through whom he was assigned, or that he was employed by that agency or the Second Respondent.

3. As a result of those findings no claims survive against the First or Second Respondent under the case numbers identified above and all those claim/s are dismissed.

4. Oral judgment was given at the end of the hearing. The Claimant has requested written reasons.

#### The Law

5. The Respondents in this case say this is an agency worker in the traditional role of a “*temporary*” worker and not an employee of the end user/s. The Claimant was effectively assigned to work with Unipart’s workforce alongside other agency staff and employees to deliver their contractual service to the

First Respondent hereinafter referred to as “SCCL”. It is argued the Claimant’s role may have had day to day administration and supervision for the purposes of the work he did for Unipart as the client, but that the agency had the contractual relationship with him, and they had a contractual relationship with the agency.

6. I initially took it from the Case Management Order the Claimant contends that the agency in this case known as ‘*RE People Limited*’ or ‘*RE Recruitment Limited*’ effectively recruited him for SCCL and it had control of his work and were his real employers. I use the term real because he told Judge Harding there was no contract between himself and agency. I therefore took it to mean he was seeking to argue the contractual documentation did not reflect the true nature of the relationship, or that the relationship changed over time, and he effectively transmuted into an employee of SCCL.
7. I have addressed these matters in any event by my findings but in fact as the Claimant did not give evidence or take any of the Respondent’s witnesses to the contractual evidence regarding himself and the agency, he did not advance a case that the documents did not reflect the true nature of the contractual relationship he had with the agency, or that it had changed. Rather confusingly he was silent on those matters and simply sort to infer he was an employee notwithstanding those documents.
8. He seeks to argue that Unipart were agents for SCCL and therefore liable as agents for SCCL. His case is founded on documents which he says show that Unipart managers had control over his working arrangements and were working as agents for SCCL, he therefore asks me to imply the real relationship was, or became, one of employee and employer with SCCL.
9. From a legal perspective, an implied contract will only arise if it is ‘*necessary*’ in order to explain the relationship at all, and in practical terms this means that such a contractual relationship with the end user will be rare.
10. The Employment Appeal Tribunal in **James v Greenwich Council [2006] IRLR 168**, said that the proper question when looking at circumstances like

those presented before me, was whether it was necessary to find an employment contract with the hirer/client to explain their relationship. Thus, if the agency arrangements remain genuine and continue to represent the relationships involved, it should be a rare case where direct employment with the hirer/client is found.

11. This was confirmed in **James v Greenwich LBC [2008] EWCA Civ 35, [2008] IRLR 302** where the court upheld the decisions of the Tribunal and the Employment Appeal Tribunal, that no implied contract had arisen with the client, in spite of the fact that the agency-provided individual had been working for three years for the single organisation. The court adopted and approved the Employment Appeal Tribunal test in the earlier *James* case cited above regarding the test of '*necessity*' and the disapproval of the idea that an agency worker could be transmuted into an employee of the hirer/client primarily from long service.
12. There were cases historically in which such a position had been found but the court felt those cases would be rare. On the question of guidance, Lord Justice Mummery specifically approved that given by Elias P in the Employment Appeal Tribunal in *James* at paras 53 to 61 (as summed up in his subsequent judgment in **National Grid v Wood UKEAT/0432/07, [2007] All ER (D) 358 (Oct) at para 21**).
13. If there had been any doubt as to whether this approach was still valid, the Court of Appeal subsequently indicated in **Smith v Carillon (JM) Ltd [2015] EWCA Civ 209, [2015] IRLR 467** that there was to be no movement away from the strictness of the '*necessity*' test. I consider the following matters helpful:
  - (a) Was there a genuine agency relationship with the Claimant at the outset?
  - (b) Did that relationship remain in existence, including as the means of payment throughout the material time?

- (c) On the evidence had there been a distinct change of circumstances or contractual arrangements since the initial hiring-out to the hirer/client by the agency.

14. I have framed the questions in this way as the Claimant does not assert or seek to prove he had an employment relationship with the agency. This was clearly discussed at some length in the Case Management hearing of the 2 September 2022 which I note records:

*“I started to explain to the claimant that there were 3 different types of employment status; employees, workers and those who are in business on their own account working for their own clients and customers. The claimant told me that he was familiar with these concepts and did not need me to explain this to him. I also explained to the claimant that there were contract worker provisions under the Equality Act, which apply where a person is employed by one entity and supplied to another person who makes work available for the individual.*

*I further explained that it is possible for agency workers in some situations to bring claims under the Agency Workers Regulations against the work agency and the hirer. I then asked the claimant to explain the basis on which he asserted that R1 and R2 were liable for all or any of the claims.*

*The claimant told me that he does not accept that there was any contract in place between him and RE People Ltd, or, as he referred to them, RE Recruitment, although the claimant does accept that RE People Ltd were involved to an extent with his recruitment. I clarified on a number of occasions with the claimant that it is his case that there is no contract between him and RE People/RE Recruitment Ltd. Instead, the claimant told me, it is his case that he was an employee of SCCL. He relies both on a written contract and on the way that the parties conducted themselves day-to-day. 4 Given that it is the claimant’s case that he was an employee of R2 I explored with him the basis on which he asserted that R1 were liable for all or any of the claims. Initially the claimant told me that R1 had “secondary liability”. After some*

*discussion we established that what the claimant was referring to was vicarious liability. What the claimant told me is that managers of R1 were acting for and on behalf of R2. – i.e., an agency type relationship is asserted. The claimant's case effectively therefore is that R1 was an agent for R2 and R1 were liable for its own acts by virtue of Section 110 of the Equality Act (as well as R2 being vicariously liable for the acts of R1 under section 109). 5 I next proceeded to try to draw up a list of the claims that the claimant is pursuing against which respondent. The claimant told me he has the following claims..."*

15. Lord Justice Mummery and Lord Justice Thomas in *James*, set out some of the arguments that can be presented as to the agency relationship, but with the major caveat that litigants should not have unrealistic expectations as to how far any such change can be brought about by the court as opposed to by legislation (EU or domestic).
16. This point was picked up again in the Court of Appeal in **Tilson v Alstom Transport [2010] EWCA Civ 1308, [2011] IRLR 169** where the '*necessity*' test was yet again applied to hold that a senior manager provided to the end user through two intermediaries (and who had refused an offer of permanent employment because he could earn more as an agency worker) was not the direct employee of that end user. The Court particularly pointed out that it was not open to a tribunal to find employment status on the basis either that the individual looks like an ordinary employee or that it is against public policy for agency arrangements to be entered into to avoid contractual status and therefore employer exposure to statutory rights.
17. In **Smith v Carillon (JM) Ltd [2015] EWCA Civ 209, [2015] IRLR 467** (para [191] above) Elias LJ made this point particularly clear when he said at [22]:  
  
*"...it is not against public policy for a contractor to obtain services this way, even where the purpose is to avoid legal obligations which would otherwise arise were the workers directly employed. ... A contract cannot be implied merely because a court disapproves of the employer's conduct."*

### The Evidence

18. I refer to the documents because Claimant has made a clearly calculated decision not to give evidence. This is despite indicating at the earlier stages of this case that he proposed to give evidence in support of his claim. He has made it clear in correspondence and orally before me he made a very intentional decision not to give evidence and prepare and exchange a witness statement and he understands the previous case management order made it clear he would need to produce and exchange a witness statement if he was going to give evidence and would not be permitted to give evidence without leave of the Tribunal if he did not.

19. He reiterated to me at the hearing that he understood this, and he was satisfied the documentary evidence proved his case without the need to give evidence, he understood this restricted his cross-examination of the Respondent's witnesses to what was set out in the documentary evidence and was clear he was not seeking to give evidence himself.

20. I am therefore left to consider the witness evidence from Ms Helen Timpson, Unipart's Customer Services & Home Delivery Director, Mr Paul Webster, Executive Director for Governance, Assurance and Legal for SCCL and the documentary evidence contained in a bundle of 627 electronic pages. The parties each filed skeleton arguments and made oral submissions.

### Findings

21. I start with the documentary evidence because it is both helpful and because the Claimant seeks to prove it did not reflect the true nature of the relationship between the parties or the relationship changed over time. I have seen a completed "online" application form with RE people herein "*the agency*") where the Claimant has applied to agency and signed a contract headed "Contract for services for engagement of an agency worker" the terms clearly show the contractual relationship is between the Claimant and the agency.

The definition and interpretation section explains the Claimant will be assigned or “*supplied*” by the agency to provide services to the hirer and the assignment ends when either the work ends, or the Claimant decides he is no longer available for that work. The Claimant asked me specifically to read the definition of “*hirer*” and so I did. This says the hirer can be an individual, form or corporate body with any subsidiary arrangement and includes any third party for whom the Claimant works pursuant to this contract.

22. The contract stipulates its terms are the entire agreement between the parties and govern all assignments. It specifically excludes there being any contract between the claimant and the agency between assignments and during assignments the Claimant will be working under this contract for the agency. It states the Claimant is not an employee of the agency and the terms are not intended to give rise to an employment relationship. In terms of the ability to vary the agreement, the contract says this would have to be in writing and agreed between the agency and the claimant. In terms of the status of the Claimant it states (importantly):

*“Agency workers status*

*3.1 During an assignment, the agency worker will be engaged by the company under a contract for services.*

*3.2 the parties acknowledge that the agency worker is not an employee of the company, these terms shall not give rise to a contract of employment between the company or the hirer and the agency worker.*

*3.3. The agency worker is supplied as a worker and is entitled to certain statutory rights. Nothing in these terms shall be construed as giving the agency worker rights in addition to those provided by statute except where expressly stated.”*

*“4.2 The agency worker acknowledges that, due to the nature of temporary work, there may be periods when no suitable work is available, and the agency worker agrees that the suitability of work shall be determined solely by the company.*



*4.3 The parties agree that the agency worker shall not be obliged to accept any assignment offered by the company, and the company shall incur no liability to the agency worker should it fail to offer assignments to the agency worker.*

*4.4 If a variation to the assignment schedule is agreed between the agency worker and the company, the company shall provide a copy of the assignment schedule confirming the agreed variation to the agency worker by no later than five business days following the day on which the variation was agreed.”*

*“5. Agency workers obligations*

*5.1 the agency worker is not obliged to accept any assignment offered by the company but if the agency worker does accept the assignment, during every assignment and afterwards where appropriate s/he will:*

*5.1.1 cooperate with the hirer’s reasonable instructions and accept the direction and supervision of any responsible person in the hirer’s was organisation.*

*5.1.2 available to the highway for not less than the minimum daily working hours (the assignment work pattern), shown on the assignment schedule.*

*5.2 if the agency worker is unable for any reason to attend work during the course of an assignment, he/she should inform the company, prior to the working day or hours. The hirer should be contacted where contact with the company is not possible, but the agency worker must also inform the company at the first possible opportunity”.*

*“7.1 The company shall pay to the agency worker the rate of pay set out in the relevant assignment schedule which will to be paid for time worked during an assignment weekly in arrears. The hourly rate may vary but will be at least equivalent to the appropriate statutory minimum wage in force at the time for the work undertaken.”*

*“9.2 The agency worker is required to provide the company with evidence of incapacity to work which may be by way of a self-certificate for the first seven days of incapacity and a doctor's certificate thereafter.”*

*“10.1 Either party may terminate an assignment or these terms at any time without prior notice for liability.”*

*“16 Rights of third parties*

*16.1 the company and agency worker acknowledge that nothing in this statement confers on any third party any benefit or the right to enforce any terms of this statement.”*

23. Therefore, the starting point is the contractual relationship as per the terms of the agreement is not one of employment and is expressly not intended to create an employment relationship with the agency or the hirer/client of the agency. The Claimant does not dispute he completed the application form and signed up to these terms.

24. He does not adduce any evidence to counter these terms and conditions being an accurate reflection of the intention of the parties when they entered into this contract. Miss Timpson made it clear in her evidence that the position was Unipart approached the agency to seek extra staff, above and beyond their own employed staff, to cover work they had secured through a contract with SCCL.

25. The uncontested history is the NHS historically had an arrangement with the Department for Health for the procurement of products for the NHS. SCCL were appointed to take over management of the supply chain. The supply chain has been known as the “NHS Supply chain” for ease of reference in the public domain. Unipart tendered for a contract to store and distribute products and were successful. Through multiple variations to the original agreement Unipart secured further work during the Covid pandemic to include PPE, vaccine distribution and handling vaccine customer services. The agreement carried with it an “open book” basis for costs, subject to the right of SCCL to audit the costs as and when they might require. Miss Timpson explained that Unipart were effectively left to deal with the work as they saw fit as the company that had secured the work and SCCL had little or no interest in the day to day running so long as the services were provided within the contractual and legal remit agreed.

26. It is in this context that Unipart sought the provision of staff. I note that at page 576 of the bundle there is an email from Ms Jill Wanklyn dated 10.09.2020 to C. This informs C he has been successful on his assignment and will be assigned to the hirer "NHS Supply Chain" supplying to the NHS starting Monday 14.09.2020 working 10am to 5pm for training days and the remaining two days 7am to 7pm. The work will be as a Customer Service Advisor/ Key worker at Daisy House, Aston in Birmingham. There is no dispute these are the premises from which Unipart worked. A worker handbook was provided by the agency, but Claimant didn't file this, and it was an agency handbook.
27. It is also clear that Ms Wanklyn was the agency representative and was stated to be the point of contact for the assignment and it says she attended the site to meet C when he started. It is clear nothing actually turns on the fact the hirer is described by the agency as the "*NHS Supply Chain*" because Mrs Timson explained there is no such legal entity, and such a term is effectively used for ease of reference to describe the various constituent commercial contracts/contractors. This was echoed in more legal terms by Mr Paul Webster, who explained many times over in the hearing when being cross-examined by the Claimant that there is no legal entity known as "NHS Supply Chain" and it is no more than a label. He also explained the various contractors and SCCL were given a licence by the Secretary of State for health and social care to use the "*NHS*" letters and logo in communications such as emails or correspondence and on buildings, uniforms and lorries etc.
28. The fact the agency chose to use the same does not evidence the existence of a legal entity and no evidence has been filed to demonstrate any legal entity by that title. The assignment email is entirely consistent with the contract the c signed with the agency and the intention of the parties when the assignment was created. It is consistent with the evidence of Mrs Timpson regarding Unipart's contractual relationship with the agency and how Unipart contracted with the agency to seek agency workers to fulfil roles.
29. The Claimant does not dispute he accepted the assignment on the above basis. He has failed to adduce any documentary evidence to counter this or suggest this was not a reflection of the intention of the parties at the time of

the assignments he did not give evidence. I find he was assigned as per the contract I have detailed above.

30. The Claimant confirmed in the hearing during his submissions and to Mr Paul Webster, that because the assignment document detailed above said he would be working in the “*NHS supply chain*”, he understood the “*NHS supply chain*” to be either a legal entity owned by SCCL at least SCCL managed the NHS supply chain, that this showed he was working for SCCL. However, this is the way the agency has described it and there is no evidence that either Unipart or SCCL had any part in that assignment document or the contract.
31. The Claimant seems to seek to imply through his questions to the witnesses, the nature of the relationship between SCCL and Unipart was that of agency. He referred me to a publication at page 576 in which it was announced that on 1<sup>st</sup> October 2021 that SCCL would be providing the management function of the NHS supply chain, had its ownership of its shares transferred from the SS for health and social care to the NHS commissioning Board, NHS England and NHS Improvement. It also states this did not change how SCCL operated, and it remained a separate legal entity. I do not understand how this is said to alter the arrangement the Claimant had with the agency and his assignment.
32. The reality is this simply reports that SCCL would provide the management function of the services provided by the commercial companies who were contracted to provide the service. I have seen the logistics service contract at page 129 of the bundle between Unipart and the NHS Business Services Authority and despite the Claimant referring Mr Websters to various parts of the contract that described the provision of a customer service, it does not dictate, as the c suggests, how Unipart go about meeting that provision through staff selection. There is no documentary evidence to show SSCL were involved in any way with any material decision/s Unipart made about their staff and who they used in the customer service team. There is no evidence SCCL even knew of the existence of the Claimant.
33. The Claimant says to me that there is a pivotal document at page 612 which will help prove his employment. This appear to be a publication on the United

Kingdom government website gov.uk on which it is announced that Unipart had secured a logistics deal costing £730 million for 5 years to seek to lower the costs of procurement of produces to the NHS, which previously was left to individual trust to negotiate, and this mean price could differ between neighbouring hospitals. This evidence is entirely in line with what Mrs Timson has explained in her evidence. This original commercial contract between Unipart and the authority was subject to variations to the contract which allowed Unipart has secured a greater value logistics package. I do not see how that helps prove the Claimant's status changed. Once again Mr Paul Webster went through the legal implications, and nothing was put to him which undermined this position. No evidence was filed to show SCCL, through the contract or any of the variations assumed management responsibility for the hiring of Unipart staff.

34. The memo of understanding, the metadata and the publications do not prove SSCL had any control whatsoever over the Claimant. There are features of this case in the evidence before me that support the contention that the assignment and relationship between the Claimant and the agency as a worker. At page 604 is the email from the Claimant in which is resigned from his "*current assignment as an analyst with Unipart logistics on the vaccine project.*" I note the Claimant sends this directly to Ms Wanklyn and CCs in his line manager at Unipart, but not to anyone at SCCL. He doesn't say he has ever met anyone at SCCL. Further in that resignation email he is asking Ms Wanklyn if he has any other obligations under his notice period.

35. In fact, as he chose not to give evidence, he doesn't adduce a shred of evidence of any contact he had with SCCL. The same appears to be the case regarding the documents he referred me to, and the discussions regarding holidays at pages 608 and 609, appearing to show the Claimant querying his holiday pay with Ms Wanklyn or when he cc'd her into communications, he was having with Unipart staff it is clear she can arrange for his holiday pay to be processed. This is entirely consistent with the contract he had with the agency.

36. As Counsel for SCCL set out in the first Respondent's skeleton, there is no expressed contract. The Claimant has not adduced any evidence of any discussions with SCCL through which he asks me to imply he agreed to work for them. Instead, he relies solely on an inference from the documents above to prove they were his employer.
37. At Page 116 I note there is a further email from the Claimant to Ms Wanklyn and cc'd to Unipart staff in which he refers again to his resignation and the acknowledgement of his resignation by the agency and says "*Re Recruitment have accepted this in writing...*" It is clear this is consistent with the terms of the contract he had with the agency.
38. The Claimant has referred me to a transcript of a meeting he appears to have had with two senior staff members of Unipart. Pawandeep Kaur and Neelam Heera. He refers to extracts from the transcript where there is discussion about his pay as he is seeking more money. Discussion about his hours of work as he is seeking to establish what hours he is required to work and discussions about staffing level in the customer service team. At various pages in the transcript, he refers to Mr Kaur, mentioning in the meeting, for example that any agreement over pay would have to go through Finance (page 571), costing have to be done and go back and forth (page 571) and that when he goes to finance and they ask why have you given that figure (the wage the Claimant was seeking) he says "because in the budgeting of the SCCL pay for it, not Unipart. So, it's out of our remit. Were asked every single week." (page 572).
39. The Claimant argues this shows SCCL were controlling his role and pay. Mrs Timson and Mr Webster were not present at the meeting, but both deny any contact between Unipart and SCCL regarding any individual staff members wages. Mr Webster was clear that a monthly figure is reported by Unipart to SCCL regarding the cost of staff wages but that is not broken down beyond the global figure. Mrs Timson agreed that there was no involvement in SCCS regarding individual wages and both agree there would be no reason for this Manager to have any direct contact with SCCL. Mrs Timson is clear in her

view that Mr Kaur is highly likely to be referring to the finance team in Unipart as he would have no dealings with SCCL.

40. The reality is this transcript does not illuminate the Claimant's case, at best the passages are open to interpretation and require context. The Claimant has chosen not to give evidence to expand the context. There is absolutely nothing before me to gainsay the evidence of Mrs Timpson and Mr Webster or to demonstrate the documents did not represent the true nature of the relationships between the parties and that includes the commercial relationships between the Respondents. Taking all those matters together I find as follows:

- (i) There was a genuine agency relationship with the Claimant and the agency at the outset and this is clearly documented. The documentation does represent the true nature of the relationship.
- (ii) That relationship remained in existence, including as the means of payment throughout the material time?
- (iii) On the evidence there has not been any change of circumstances or contractual arrangements since the initial hiring-out to the hirer/client by the agency.
- (iv) The Claimant has failed to prove he was employed by SCCL and on the same basis has failed to prove Unipart were acting as agents for SCCL.
- (v) I find the Claimant was an agency worker under the terms of his contract with the agency and was on an assignment as such with Unipart. There is simply no necessity to depart from the contracts and there is no evidence to support such a departure.
- (vi) The Claimant does not argue any alternative employment relationship and so I turn to his claims:
- (vii) The UD dismissal claim/s as against SCCL is not well founded and is dismissed. He was not an employee of SCCL.
- (viii) All claims for direct sex discrimination/harassment and equal pay discrimination under the Equality Act 2010 against SCCL fail because,

- (i) the Claimant was not an employee, under a contract of apprenticeship or a contract personally to do any work for SCCL as required by Section 83((2)(a) Equality act 2010 and,
- (ii) SCCL were not a principal as required by section 41(5) as they did not make work available to the Claimant and the Claimant has not shown he was employed by another (Unipart or the agency) or that he was supplied by them as an employee in furtherance of a contract to which SCCL was a party (whether or not the employer is a party).

41. By virtue of the above, all claims against Unipart as agent for SCCL are not well founded and are dismissed because the Claimant has not shown Unipart were acting as agents for SCCL and he does not plead any claim against Unipart as a contract worker because he denies any contract with the agency or that he was employed by the agency or Unipart.

Employment Judge **Mensah**

Date 29.11.2023

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.