EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106918/2023

Held in Glasgow on 14 February 2024

Employment Judge M Robison

Mr A Traynor	**Claimant Represented by Ms C Bergin - Mother**
Airdrie Motorist Centre Ltd	**Respondent Represented by Mr J Hoy - Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim for breach of contract (wrongful dismissal) is not well-founded and is dismissed.

REASONS

1. Following a case management preliminary hearing which took place on 19 January 2024, this case was listed for a final hearing taking place in Glasgow for one day.

2. The issues for determination which had been identified at the case management preliminary hearing were only whether there was a breach of contract in respect of wrongful dismissal in regard to the claimant's contract of apprenticeship. The respondent's position was that no contract of apprenticeship had yet been entered into. The respondent also argued that the claim was in any event time barred.

3. I heard evidence from the claimant and from Ms C Bergin, his mother who represented him; and for the respondent from Mr J Hoy, director of the respondent company and its representative; as well as Mr S Hill, a qualified motor mechanic who works for the respondent.

4. At the case management preliminary hearing there had been a discussion about whether Ms Gillian Cameron, administrator for the respondent,

would give evidence, since the claimant intended to call her. It was understood at that time that the intention was that she would be a "character witness" and therefore that her evidence would not be relevant. It transpired during the course of this hearing that Ms Cameron had been involved in the signing of the modern apprenticeship agreement. She was not however called by the respondent to give evidence.

5. Both parties had lodged documents which were referred to during the hearing. The claimant lodged further documents during the hearing. Reference was made to additional documents which parties advised they would submit following the hearing, namely bank statements from the claimant and a "job card" from the respondent. Parties were also requested to submit pay slips for the claimant. Parties were invited to comment on these additional documents by 28 February 2024.

6. I was made aware of comments made by Ms Bergin in an e-mail dated 1 March 2024, which she had understood she had forwarded to the Tribunal prior to the deadline. I have considered those comments, and given my conclusion regarding the type of contract on which the claimant was engaged, they do not make any difference to the outcome.

Findings in fact

7. The respondent is a motor vehicle repair workshop. Mr J Hoy is a director and part-owner who has been a qualified motor mechanic since 1974.

8. Over the years, Mr Hoy has taken on a large number of apprentices, totalling in the region of 150. He would take on apprentices following a trial period. Since setting up the respondent business nine years ago, he has taken on six apprentices. These apprentices were taken on through the Lanarkshire Automobile Trade Group Association (LAGTA) rather than through the local college. LAGTA would assist in selecting the apprentices.

9. The claimant worked for the respondent from 27 February 2023 until he was dismissed on 12 June 2023. The claimant was aged 17 at the time and this was his first job after leaving school.

10. During early February 2023, the claimant attended at the respondent's premises. He spoke to the receptionist, Gillian Cameron, and asked

whether they were looking to take on any apprentices. She made arrangements for Stephen Hill, who deals with apprentices, to contact him.

11. Mr Hill telephoned the claimant who explained that he was currently attending New College Lanarkshire undertaking a course in motor mechanics. At that time, he was attending college three days each week, but was available to work on Wednesdays and Fridays.

12. It was agreed that the claimant would come in the next Wednesday and Friday to assess whether he might work full-time. He came in on Wednesday and Friday for two weeks. He then expressed a desire to be taken on full-time. He discussed with Mr Hill whether he could come in full-time given that he was at college. Mr Hill contacted the college and was advised that the claimant could be released from his college course to work for them full-time with a view to him being taken on as a modern apprentice.

13. Mr Hill therefore confirmed to the claimant that he could commence on a trial basis full-time starting the following Monday, 27 February 2023.

14. The claimant was engaged on the understanding that he would subsequently be taken on as an apprentice mechanic under a modern apprenticeship programme facilitated by the college.

15. The claimant worked from 8.30 am to 5.30 pm each day and was initially paid £5.31 per hour, which increased to £6.00 per hour from April 2023.

16. The claimant worked alongside two other apprentices and three qualified mechanics. Initially, he was to shadow the mechanics and undertake tasks which included keeping the workshop tidy and assisting other apprentices and mechanics with their jobs. He would then be assigned simple tasks such as assisting with topping up oil and changing tyres. He progressed to putting cars on ramps and dealing with the undercarriages, assisting with brake changes and changing batteries and assisting with service jobs which required two people.

17. One of the tasks which the claimant undertook was to change tyres. For the first few jobs he was given assistance. Then after around five tyre changes, he was overseen by colleagues. Thereafter he would complete

this task on his own working alongside a colleague. This was one of the first tasks new starts would learn.

18. On 10 March 2023 Mr Hill signed a form which he understood was a form which would release the claimant from college. In fact, it was a modern apprenticeship enquiry form which was an application to enroll a student on a course and setting out how the modern apprenticeship college course would be funded.

19. The intention in any event was that the claimant would commence an apprenticeship as a motor mechanic and that he would attend college on a day release basis.

20. Arrangements were made by Mr Hill for an assessor from the college to attend at the respondent's premises to discuss the arrangements for the claimant to be taken on as a modern apprentice. The first meeting was cancelled because the assessor was on sick leave. A second meeting which was arranged was also cancelled. A third meeting took place on 25 May 2023. Neither Mr Hill nor Mr Hoy were in attendance because they were not aware of the meeting.

21. The claimant met with the assessor, Mr Paul Simpson, and they completed the modern apprenticeship training plan agreement during the meeting.

22. Following questions of the claimant, Mr Simpson completed the section A on "apprentice details" and then section B called "apprentice history and current employment status". In that latter section, it was noted that the claimant had been employed in his current role for 4-6 months, and in regard to how long employed prior to the start of training, the box 4-6 months was ticked.

23. Under section C "employer details", the employer contact name was stated to be Stephen Hill and the employer contact e-mail gillian@airdriemotoristcentre.com.

24. Under section D "training details" it was stated that the start date was 25 May 2023 and the expected end date was 30 November 2026.

25. Section F headed “information for the apprentice and apprentice acknowledgement, commitment and declaration to SDS” was signed by the claimant on 25 May 2023.

26. After completing these sections, Mr Simpson met with Ms Cameron. She signed Section G, headed “information for the employer and employer acknowledgement, commitment and declaration to SDS” as the employer’s representative, stating that she held the position of “admin”.

27. Section H, headed “information for and signature of the Provider” was signed on 25 May 2023 by the assessor Paul Simpson.

28. In a separate document headed “programme details”, this stated that the anticipated length of the training programme was three and a half years. This set out contact details for college personnel.

29. Under the section “list any other methods used to assess previous skills and experience”, and the box “work trial” was ticked and under “other” it was stated, work place trial and employer feedback. It stated that the first planned review date was 24 August 2023.

30. A further document entitled “apprenticeship training agreement” was also signed on 25 May 2023 by Mr Simpson, the claimant, and Ms Cameron, whose position in company was stated to be “admin”.

31. This set out the responsibilities the college, of the claimant and of the employer. Under employer responsibilities, it was stated that the employer would “employ the participant subject to the employer’s specified terms and conditions of employment”.

32. The claimant also completed an enrolment form 2022-2023 for New College Lanarkshire. Under course information, the mode of attendance was stated to be “day release/M/A” and “actual student start date” was stated to be 25 May 2023.

33. Mr Simpson noted on the front page of the modern apprenticeship agreement that the first day release date was 23 August 2023. The claimant advised Mr Hoy that he was due to attend college on 23 August 2023.

34. During the course of his employment with the respondent, Mr Hoy had cause to raise concerns about the claimant's cleanliness on a number of occasions. This related in particular to the claimant getting particularly dirty when undertaking tasks. Mr Hoy was concerned about him getting into cars with oil on his overalls, and advised him that he should not attend reception. Mr Hoy provided the claimant with new overalls and boots.

35. Mr Hill also became concerned about what he viewed as the claimant's lack of interest and lack of effort latterly. In particular, after a couple of months in the job, he found that he had to keep chasing him to continue with his tasks and that as time went on he was of the view that got complacent.

36. Mr Hoy was also concerned about the claimant's failure to concentrate on his job and the requirement to chase him to fulfil his duties. He and Mr Hill had discussed these concerns with each other and Mr Hoy had decided that he did not intend to take him on as an apprentice.

37. No formal disciplinary action was commenced.

38. In or around early June, Mr Hoy and Ms Bergin had a disagreement which resulted in an altercation between them.

39. On the morning of Monday 12 June 2023, Mr Hoy had cause to raise a concern with his staff relating to an accident which had taken place that week-end on the motorway near Harthill in respect of a vehicle which had been worked on the previous Friday. That car had been brought back to the respondent by the AA. Mr Hoy said that this was a car which he had worked on with the claimant and he asked the claimant to come into the office to discuss that with him.

40. Mr Hoy's position was that it was clear to him, based on what he saw and on what he discussed with the AA, that, in regard to the cause of the accident, the wheel which had been worked on had come off because it had not been properly tightened. Mr Hoy concluded that the torque wrench, which was a tool for ensuring that wheels were fitted to manufacturers' specification, had not been used or at least not used properly.

41. He was aware that he had requested that the claimant undertake the job of changing the tyre on that car the previous Friday, 9 June 2023. Following completion of the job, Mr Hoy, who had been in the office at the time, asked the claimant if he had undertaken the torquing to which he had replied that he had. Mr Hoy in response gave him a thumbs up and said "good lad".

42. Mr Hoy accepted that the claimant had confirmed that he had torqued the wheel nuts but Mr Hoy did not check whether he had or not.

43. Mr Hoy advised the claimant in the meeting that he had no alternative but to let him go. He arranged for one of the other apprentices to give him a lift home.

44. Mr Hoy advised the owners of the car that he would repair the car at no expense to them, which he did. The value of the repairs was approximately £3,000.

45. Mr Hoy became aware after the claimant had been dismissed that paperwork had been signed by Ms Cameron. He advised her that she did not have permission to sign such documents. She advised that she understood that they related only to funding arrangements.

46. After his dismissal, the claimant contacted the college and was advised that the motor mechanic course was full and that he could not recommence until the next academic year. He was told that an alternative would be to obtain another apprenticeship. On reflection, given his experience, he decided that he wanted to look for an alternative career.

47. The claimant started to look for another job on 14 June 2023. In the main, he made online applications but he also updated his CV and handed it in to a couple of places. He was looking for any job, including for example in fast food outlets and factories.

48. He did not obtain employment and as a result suffered mental health concerns. He was signed off by his doctor as unfit for work due to stress from 9 August 2023 for one month. Towards the end of that period, he secured shifts through an agency at a potato factory. He got his first shift on 4 September 2023, and initially was only given one or two shifts per

week. Latterly he has been working 40 hours per week, paid at an hourly rate of £10.42.

49. The claimant discussed his dismissal with his parents and shortly after the family decided that he should make a claim against the respondent. The claimant's mother, Ms Bergin, agreed to undertake all of the research and investigation into that and to complete the paperwork.

50. Ms Bergin contacted the respondent by e-mailing Ms Cameron on 19 June 2023 for the attention of Mr Hoy advising that the claimant was going to appeal the dismissal. Ms Bergin subsequently contacted the respondent to obtain the relevant paperwork. Ms Cameron forwarded her the documents which she had relating to the modern apprenticeship arrangement.

51. Mr Hoy telephoned Ms Bergin to explain why he had dismissed the claimant and this related to the incident with the wheel.

52. Ms Bergin took advice from the CAB about making a claim. They briefed her on what to send to Mr Hoy and advised that she should get the process started because there are time limits. They advised her to get in contact with Mr Hoy and drafted a letter, dated 31 July 2023, asserting that they had breached the claimant's contract and seeking redress.

53. The claimant did not receive a reply to that letter. Mr Hoy is not aware of receiving that letter.

54. Ms Bergin contacted the CAB again who assisted her in applying for an early conciliation certificate from ACAS. The claimant contacted ACAS on 18 August 2023.

55. ACAS contacted Mr Hoy on several occasions and this matter was discussed but there was no resolution.

56. The ACAS EC certificate was accordingly issued on 29 September 2023.

57. The claimant thereafter got back in touch with the CAB who advised her to lodge the claim on behalf of the claimant with the Employment Tribunal.

58. The claim was lodged on 18 October 2023. Ms Bergin, as the claimant's representative, was advised by letter dated 27 October 2023 that the claim

had been rejected. This is because she had named the respondent as Mr J Hoy rather than Airdrie Motorist Centre Ltd which was the name of the respondent on the EC certificate.

59. After confirming that the claim had been rejected and the reason for it, the letter continues, "As this decision has been made by a legal officer, you may apply to the Tribunal for the decision to be considered afresh by an Employment Judge. Such an application must be made within 14 days of this letter".

60. That letter then states, in bold, "Please note that the relevant time limit for presenting your claim has not altered".

61. The letter continues, "You have the right to apply for a reconsideration of this decision under rule 13. If you want to apply you must do so in writing within 14 days of the date of this letter quoting the pre-acceptance reference number shown above….".

62. Ms Bergin understood that the claimant had 14 days to submit a new claim form.

63. On 8 November 2023, Ms Bergin submitted an entirely new claim form to the Employment Tribunal with the defect amended. That claim was accepted and processed in the usual way.

Deliberations and discussion

64. This claim relates to breach of contract only. The claimant asserts that he was engaged on a contract of apprenticeship with the respondent and that to dismiss him in the circumstances in which they did was wrongful dismissal, that is a breach of contract.

65. The respondent's position is that no contract of apprenticeship was entered into because the claimant was engaged on a trial basis, and Ms Cameron, who signed the training agreement, did not have permission to do so.

66. The respondent also relies on the fact that the claim was lodged out of time, and therefore this Tribunal does not have jurisdiction to decide the claim in any event.

67. With regard to the evidence from the witnesses, I accepted that all of the witnesses were credible witnesses. In other words I accept that they were telling the truth from their own perspective. As is often the case in these circumstances, the difference between them related to their perception and comes down to misunderstandings.

68. I should say that the claimant came across as a very sensible and mature young man, and indeed Mr Hoy had confirmed that he agreed that he had no issue with the claimant's character. It is no fault of his that he understood that he had been engaged as an apprentice given that was the intention and given the paperwork which was signed.

69. The first issue I had to deal with however was the issue of time bar, because this relates to the question whether this Tribunal has jurisdiction at all to decide the claim.

Time bar issue

70. The law relating to time limits in respect of claims relating to breach of contract is contained the 1996 Act and the Employment Tribunals (Extension of Jurisdiction (Scotland) Order 1994 (the 1994 Order).

71. Article 7 of the 1994 Order states that an employment tribunal shall not entertain a complaint in respect of an employee's contract unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. Article 7(c) states that where a tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time, then a complaint can be lodged within such further period as the tribunal considers reasonable.

72. Thus the tribunal must consider whether the claim was lodged within the requisite time limit and if not whether it was not reasonably practicable for the claimant to present their claim in time, the burden of proof lying with the claimant. If the claimant succeeds in showing that it was not reasonably practicable to present the claim in time, then the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable.

73. The Court of Appeal considered the correct approach to the test of reasonable practicability in the case of *Lowri Beck Services Ltd v Brophy*

[2019] EWCA Civ 2490. Lord Justice Underhill summarised the essential points as follows:

1. The test should be given "a liberal interpretation in favour of the employee" (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 479, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53)

2. The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was "reasonably feasible" for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119…

3. If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;

4. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*)…

5. The test of reasonable practicability is one of fact and not law (*Palmer*).

74. In this case the claimant delegated responsibility for lodging his claim to his mother, Ms Bergin, who was his representative at this hearing.

75. She advised that she had taken advice from the CAB and that she had been advised that there were time limits for lodging the claim.

76. She followed the advice she received from the CAB, initially to contact the respondent direct to seek a resolution, and then to first contact ACAS in regard to early conciliation.

77. The claimant was dismissed on 12 June 2023. That would mean that the time limit for lodging a claim would normally have been 11 September 2023. However, contact with ACAS operates to "stop the clock" for time limit purposes. Here the claimant contacted ACAS on 18 August 2023, which was within the time limit. An EC certificate was issue on 29 September 2023.

78. So long as a claimant contacts ACAS within the three month time limit, then the time limit is extended either by one month or the remainder of the three month period minus one day (whichever is longer). Here the claimant had one month in which to lodge the claim following the issue of the EC certificate, that is the claimant should have lodged his claim by 29 October 2023.

79. In fact the claim was not properly lodged until 8 November 2023. Although Ms Bergin had initially lodged the claim on 18 October 2023, which would have been in time, she made an error in completing the claim form, such that it was rejected. The claim form was returned by letter dated 27 October 2023, and Ms Bergin was advised in that letter what she should do. She was reminded that the relevant time limit had not altered.

80. Unfortunately, Ms Bergin mistakenly read that letter as giving her a further 14 days to re-lodge the claim. This explains why she did not lodge the claim again until 8 November 2023.

81. It is clear then that this claim has been lodged out of time. The question is for this Tribunal is whether it was not reasonably practicable to have lodged it in time. As noted above, Tribunals must follow guidance from the Court of Appeal when considering this question. This is a case where a claimant has missed a time limit because of a mistake or misunderstanding.

82. The question then is whether that mistake or misunderstanding was reasonable.

83. Clearly it was possible and indeed feasible for the claimant to have lodged the claim in time, having already lodged a claim form which was in time. Ms Bergin made a mistake on that initial form such that it was not accepted. She stated that the claim was against Mr J Hoy instead of the respondent.

That is a very common mistake to make so I could accept that was a reasonable mistake to make.

84. However that mistake was compounded by another mistake or misunderstanding, which resulted in Ms Bergin believing she had a further 14 days from the date of rejection to lodge an amended claim form. The question then is whether that mistake is a reasonable one for her to make.

85. I asked myself then, in the face of clear advice, was it reasonable for the claimant to have mistaken that advice, and I came to the view that it was not.

86. On the one hand, Ms Bergin thought that she had 14 days to resubmit the claim. That was because she misread the letter rejecting the claim. She understood that she had 14 days to resubmit the claim. There are in fact two references to 14 day time limits in that letter, one in relation to considering afresh the decision of the legal officer and the other in relation to a reconsideration of the decision under rule 13.

87. On the other hand, Ms Bergin advised that she was aware of time limits. She had taken advice from the CAB which she had followed. She did in fact lodge the original claim in time. The letter which she received rejecting the claim states in bold that the relevant time limit for presenting the claim had not altered.

88. I took account of the fact that the test should be given a liberal interpretation in favour of the employee. I also took account of the fact that Ms Bergin was not legally qualified. However, she was aware of time limits, having previously consulted the CAB. It is unfortunate that she did not consult the CAB regarding that letter, because she mistakenly thought that she had 14 days to respond despite the clear direction, in that letter, that the rejection did not extend the time limit.

89. Thus I conclude that it was not “not reasonably practicable” for the claimant to have lodged the claim in time. This means that this Tribunal does not have jurisdiction (or powers) to determine the claim because of the failure to meet statutory requirements relating to time limits.

Breach of contract

90. Given however that I had heard evidence relating to the substantive claim at this hearing, I decided to consider the substantive question in this case, had the claim been lodged in time.

91. The sole issue to consider was whether or not the respondent had wrongfully dismissed the claimant in breach of contract. The 1994 Order permits the claimant to pursue a claim for breach of contract in this Tribunal where his employment has terminated.

92. This case is unusual to the extent that the respondent denies that they entered into a contract of apprenticeship with the claimant at all. The respondent's position is that the claimant was employed on a trial basis prior to engaging him as an apprentice. Their position is, to the extent that a training agreement was signed, that this was signed by Ms Cameron who is an administrator and that she did not have permission to enter such an agreement on behalf of the company.

93. It is clear that there was a misunderstanding between the claimant and the respondent regarding his engagement. The claimant advises that he gave up his course at college on the basis that he understood that he was to be taken on as an apprentice. His mother in evidence said that he had not been enjoying the college course. Mr Hoy said that he would take individuals on a trial basis before taking them on as apprentices. He advised that he had a good deal of experience over 50 years as a qualified mechanic of engaging apprentices. It would be surprising if an employer took on an individual as an apprentice without a trial period given the implications of reaching an agreement to take them on as an apprentice (in the traditional sense). He advised that his experience with regard to apprentices was with other third party providers, latterly through LATGA (Lanarkshire Auto Trade Group Association), who helped him to recruit apprentices.

94. It was not in dispute that the claimant's employment started on 27 February 2023, that is that he was taken on as an employee at that time, with the intention of being taken on at some point as an apprentice mechanic. The claimant's position however is that he was engaged on a contract of

apprenticeship from the date that he signed the modern apprenticeship agreement.

95. The claimant thus relies on the "Modern Apprenticeship Training Plan and Agreement" which was lodged to support the argument that he was taken on as an apprentice commencing 25 May 2023.

Authority to bind the respondent

96. I considered it important to first consider whether the agreement which had purportedly been entered into by the respondent was in fact a valid agreement. This was because Mr Hoy asserted that Ms Cameron did not have the authority to enter into such an agreement.

97. In evidence Mr Hoy said that he did not know about the agreement until it was raised as part of this claim. Mr Hill said in evidence that he knew nothing about it either. While they had been expecting to attend a meeting with a representative from the college, initial meetings were cancelled, and they did not attend the meeting when the paperwork was signed by Ms Cameron.

98. Mr Hoy said that Ms Cameron did not have permission to sign such a document on behalf of the respondent company. He explained that she subsequently told him that she thought it was just a document relating to funding (although we did not hear evidence from her). It was not however disputed that she was a member of administrative staff, since she described herself as "admin" and the claimant described her as "the receptionist".

99. Normally for a contract to be entered into which binds a company it must be signed on behalf of the company by a director or a company secretary or an authorised signatory. An authorised signatory need not be a director, and could be for example an employee, but that employee would normally require to have been given authority by the board of the company.

100. It is not surprising that administrative staff would not have authority to bind the company. From the evidence I heard, it is clear that it was not the intention of the respondent, through Mr Hoy or even Mr Hill whom Mr Hoy

said had authority to deal with apprentices, that the claimant should have been taken on as an apprentice.

101. I have concluded therefore that this is not a valid agreement, because it was not entered into by anyone with authority to bind the respondent company.

102. I took account of the fact that Mr Hoy was not aware of any agreement having been reached until he was referred to the paperwork as a result of this claim having been raised. I took account of the fact that the time frame between the date that the training agreement was signed and the date of dismissal was very short.

103. Further and in any event, Mr Hoy's evidence was that this incident was "the last straw" and that he had he already had concerns about the claimant. He had discussed concerns about his cleanliness with Mr Hill who also expressed concerns about the claimant's work ethic. The evidence indicated that the respondent did not have any intention, by the end of May, of taking the claimant on as an apprentice.

Contract of apprenticeship

104. Even if Ms Cameron could be said to have authority to enter into contracts on behalf of the respondent, I went on to consider whether this "training plan and agreement" could amount to a contract of apprenticeship between the claimant and the employer, which was a matter of dispute.

105. Given that the issue of contractual intention is a factor to be considered when deciding whether a contract is one of apprenticeship, and given that I have accepted that neither Mr Hoy nor Mr Hill knew anything of the agreement which had been reached, it is clear that those with the authority to do so had no intention of entering into a contract of apprenticeship. That influences the considerations which require to be given when making an assessment about whether a contract is a contract of apprenticeship or otherwise.

106. When it comes to the characteristics of a contract of apprenticeship, by reference to *Chassis and Cab Specialists Ltd v Lee* [2011] 2 WLUK 234 and *Flett v Matheson 2006 ICR 673 CA*, the factors to consider include the

following: whether training is the principal purpose of the contract; the duration of the training; the level of qualifications to be gained; the labels and language that the parties applied to the relationship; as well as the contractual intention of the parties.

107. I came to the view that the arrangement between the claimant and the respondent cannot properly be described as under a "contract of apprenticeship".

108. So far as the principal purpose of the agreement between the claimant and the respondent, and indeed the contractual intention of the respondent, this was that the claimant was to be engaged on a contract of employment for a trial period, with the intention of taking him on as an apprentice. That was certainly the intention of the respondent, and indeed on the evidence, it was also the evidence of the claimant, because he asserts that he was not engaged as an apprentice until 25 May 2023.

109. I came to the conclusion that the claimant was engaged on a contract of employment and the claimant was to be taken on with a view to being taken on as an apprentice after a trial period.

110. To the extent that either party used the language of apprentice although the parties used the language of 'apprentice' when referring to the relationship, that was not decisive. That was partly because the claimant's status could not have changed from before the training agreement was signed and after because neither Mr Hoy nor Mr Hill were aware that the agreement had been signed.

111. With regard to the written agreement, if it were to be assumed that Ms Cameron did have authority to bind the company, I did not consider that this could be categorised as a contract of apprenticeship for the following reasons:

i) It is described as a "modern apprenticeship training plan and agreement", not a contract of apprenticeship;

ii) it is not an agreement between the claimant and the respondent about the terms of his engagement;

iii) It is a style document created by Skills Development Scotland in regard to the funding of a modern apprenticeship programme by SDS;

iv) It references the "provider" which is the organisation which holds the contract with Skills Development Scotland to provide modern apprenticeship services to the apprentice;

v) In the reference to "training details", the modern apprenticeship provider is stated to be New College Lanarkshire, with a start date of 25 May 2023 and an "expected end date" of 30 November 2026;

vi) in the section eligibility for apprenticeship in section F "information for the Apprentice and Apprentice Acknowledgement, commitment and declaration to SDS", this relates to confirmation that the claimant met the eligibility criteria to be a modern apprentice;

vii) Section G is headed "information for the employer and employer acknowledgement, commitment and declaration to SDS" and the agreement is with Skills Development Scotland, to place the "apprentice" on their "programme";

viii) Under the section eligibility for an apprenticeship, Ms Cameron signed on the employer's behalf that "to place the Apprentice in the Programme, you must meet certain minimum criteria which are set out below. I confirm on the Employer's behalf that at the date the Apprentice starts the Programme, the following are true and accurate. The Apprentice is employed by the Employer and a. their main employment and normal working premises are in Scotland; b. is working as an employee to consolidate the skills they will gain during the programme; c. whilst performing their apprenticeship task on a daily basis is directly managed by appropriately experienced staff; d. is not required or expected to perform their apprenticeship in addition to their contracted number of working hours; e. is under a contract of employment relevant to their programme"; and

ix) Ms Cameron signed another document on behalf of the respondent headed "apprenticeship training agreement" the respondent's

obligation under this agreement being is to "employ [the claimant] subject to the employer's specified terms and conditions of employment".

112. Although there is a question whether a contract of apprenticeship can be established on the basis of an oral agreement, there was no oral agreement here that the claimant would be engaged as an apprentice. In terms of the intention of the parties, as discussed above, the respondent had no intention of entering into a contract of apprenticeship so it is not possible to discern what the intended terms of engagement would be.

113. The document signed is not therefore an agreement between the claimant and the respondent regarding the terms of any contract of apprenticeship; no terms of engagement were agreed, including no start date and end date as between the claimant and the respondent, rather than as between the claimant and the college, and no provisions, for example, relating to any agreement being for a fixed term or otherwise relating to termination.

114. I conclude therefore that the documents relied on could not properly be described as creating a "contract of apprenticeship" between the claimant and the respondent. The first is a funding agreement and this second is a "training agreement" between the college, the claimant and the respondent.

115. The "actual student start date" relied on by the claimant is not apparently part of the agreement, but separate from it in another document entitled "enrolment form" which is a pro forma from New College Lanarkshire. It is set out under a heading "course information" and "mode of attendance". It is a section which is completed by a "member of staff". This document is signed only by the claimant and Mr Simpson, and not the respondent or indeed anyone purporting to act on behalf of the respondent.

116. The document relied on headed "programme details" is also apparently a document which sets out information about the college contacts. It is not signed by the claimant, the college or the employer.

Conclusion

117. I therefore have decided that no valid contract of apprenticeship was entered into between the claimant and the respondent. I have reached this conclusion primarily because Ms Cameron did not have authority to bind the company to the terms of the training agreement which she signed on behalf of the company or as the representative of the company.

118. However and in any event, I have come to the view that the agreement which was purportedly reached between the claimant and the respondent could not in any event be categorised as a traditional contract of apprenticeship, for the reasons I have set out above.

119. I have decided that the claimant was taken on under a contract of employment for a trial period. Although it was the intention of all parties at the outset that the claimant would be taken on as an apprentice and that he would attend college on a day release basis, there was no evidence that any such agreement had been entered into by the date of the claimant's dismissal. Neither Mr Hoy nor Mr Hill were aware of the training agreement until after the claimant had been dismissed.

120. Given that I do not accept that the training agreement amounted to a contract of apprenticeship or in any event that is was validly binding on the respondent company, there was no need for me to consider whether there was a breach of contract or whether the claimant had been wrongfully dismissed.

121. While he was engaged as an employee, he would have enjoyed the statutory rights of an employee, this did not, as Ms Bergin accepted, include the right to claim unfair dismissal.

122. This is an unfortunate case which comes down to a misunderstanding between the claimant and Mr Hoy. It is understandable that the claimant may well have been led to believe that he had been taken on as an apprentice given the terms of the agreement which he signed, especially where a member of the respondent's staff purported to sign it on behalf of the company. However, given Mr Hoy was not aware of that agreement and given his intention to employ the claimant first for a trial period before engaging him as an apprentice, and given his understanding that as at the

date of dismissal the claimant had not yet been engaged as an apprentice, unfortunately for the claimant there can be no redress against this respondent.

123. In these circumstances, even if I had been able to conclude that this claim was lodged in time, I would conclude that the claimant's claim for breach of contract based on wrongful dismissal is not well founded and must be dismissed.

M Robison

_____

Employment Judge

7 March 2024

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Date

Date sent to parties **11 March 2024**