



EMPLOYMENT TRIBUNALS

Claimant: Mr E Jenami
Respondent: Elim Foursquare Gospel Alliance (a charity)
Heard at: Midlands West Employment Tribunal (by CVP)
On: 19 April 2024
Before: Employment Judge Chivers

Representation

Claimant: Mr A Corban, solicitor
Respondent: Mr P Roberts, solicitor

RESERVED JUDGMENT ON PRELIMINARY HEARING

1. The claimant's claim of breach of contract is dismissed upon withdrawal.
2. The claimant was not an employee of the respondent pursuant to section 230 Employment Rights Act 1996 and accordingly his claim for unfair dismissal is dismissed.

REASONS

1. This case involves whether the claimant was unfairly dismissed from the role he undertook for the respondent as Senior Paster/Minister. The respondent is a charity which has several Pentecostal churches and asserts that the claimant was an officeholder and so is not able to pursue an unfair dismissal claim.
2. The case was listed for a Preliminary Hearing following a Case Management Preliminary Hearing on 24 July 2023. At that point, the claimant had raised claims of unfair dismissal, breach of contract and discrimination because of religion/belief. Case Management Orders were set out at the Preliminary Hearing which included a requirement for both parties to send to the other all documents relevant to the contentious issues by 4 September 2023.

3. By the time of today's Preliminary Hearing, the claimant had withdrawn his claim for discrimination because of religion/belief. The claimant also confirmed that he did not intend to pursue his breach of contract claim.
4. The only matter therefore to determine at this Preliminary Hearing is whether the claimant was an employee of the respondent within the meaning of section 230 Employment Rights Act 1996.
5. This case was converted from an in-person hearing to a CVP hearing at the request of Mr Corban as a reasonable adjustment. I clarified with Mr Corban at the outset whether he required any additional adjustments and he confirmed that no additional adjustments were required.
6. At the outset Mr Corban requested the Tribunal consider – in the alternative – that if the Tribunal finds the claimant is not an employee, that the Tribunal go on to consider whether the claimant is a worker under section 83 Equality Act 2010. As the only claim before the Tribunal was an unfair dismissal claim – and a finding that the claimant was a worker would not be relevant in respect of this claim - I did not see how such a finding would assist, and I therefore rejected this request.
7. I considered a limited bundle of documents of 60 pages (of which the pleadings and the Record of Preliminary Hearing made up 27 pages). During the hearing, Mr Corban disclosed 2 additional emails in respect of requests made during the litigation for documents. I admitted these documents and have considered them in reaching my decision.
8. Witness statements were provided by the claimant (a 32-paragraph statement, the majority of which focused on the circumstances of the dismissal) and from David Campbell (a 9-paragraph statement), a Minister with the respondent, Regional Leader for the Metropolitan East and West Regions and member of the respondent's National Leadership Team. The bundle and statements were not available at the outset of the hearing so there was a brief adjournment whilst I viewed them. Evidence was heard from both the Claimant and Mr Campbell.

Findings of Fact

9. I make the following findings of fact.
10. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the tribunal must consider to decide if the claimant succeeds or fails. If I have not mentioned a particular point, it does not mean that I have overlooked it. It is simply because it is not relevant to the issues.
11. The respondent is a Pentecostal Christian denomination with around 500 churches in the United Kingdom. The churches are not separate legal entities.
12. The claimant was employed as a Personal Assistant to the Senior Pastor of the respondent's Feltham Centre. His letter of appointment is dated 30

October 2017. It is agreed by both parties that this position was an employment position.

13. In February 2018, the claimant commenced his Minister in Training programme and by 21 October 2019 the claimant was officially ordained.

14. In November 2019 the respondent engaged in a re-structuring exercise. This resulted in the claimant's role as Personal Assistant to the Senior Pastor at Feltham being made redundant. An email from Akinpelu Psuntoki on behalf of the Leadership Team of the respondent dated 3 November 2019 provides –

“Given that you are currently completing your Minister in Training programme on a part time basis with Elim at our Feltham Christian Centre, the leadership has decided to offer you a full-time trainee’s pastors’s position at Feltham.”

15. The respondent did not recommend the claimant get legal advice or offer to fund him getting legal advice about this appointment and any consequences of this move.

16. The claimant was appointed to this role. The claimant was not provided with a written contract of employment or job description. He had a considerable degree of autonomy in this position. The arrangements for payment to the claimant in respect of this role were set out at the time of the appointment with responsibility split over a 3-year period between the main Treasury of the respondent and Feltham Christian Centre.

17. The Claimant continued in this position until 11 April 2022. At this point, he became Pastor of Hayes Elim Christian Centre. He was given a P45 in respect of the termination of his role at Feltham Christian Centre.

18. The letter of appointment to the position as Pastor of Hayes provides –

“The principal accountabilities of the Pastor are set out in the enclosed Church profile and have been discussed during the process but the most important is vision and energy to lead the Church to the next phase to the glory of our Lord Jesus Christ.”

19. The Church profile referred to above was not for some reason included in the bundle of documents, but the letter of appointment does refer to the Claimant's basic salary, details of Manse and respondent's contribution to the Claimant's pension. There was no negotiation of terms.

20. The respondent historically does not employ Ministers or Ministers in Training but appoints them as officeholders because the role is regarded as a calling. HMRC treats Elim Ministers as self-employed earners for national insurance purposes.

21. In the appointment letter of 11 April 2022, there was a request made to the claimant to fill in the Elim Payroll Service Church Joining Form. The letter requests the claimant fill in the *“employee details and bank account details only”* and the *“HMRC starter checklist (all sections).”* Save as set out in

paragraph 22 below, the Claimant filled in this form and referred to himself as “self-employed” in the box “National Insurance status.”

22. A separate box on the form refers to “contracted hours” and “contract days per week.” In response to both boxes, there is written “N/A” with the word “officeholder”. There is a dispute in evidence in terms of who filled in these boxes and wrote “officeholder”. This part of the form is under the heading “Employee’s Job Details”. I find on the balance of probabilities that the claimant - pursuant to the request that had been made in the letter of 11 April 2022 – did not fill in this part of the form. I find that this part of the form was filled in by the Treasurer of the respondent before the form was processed.
23. There were discussions at the point of the appointment between Mr Campbell and the claimant in terms of the role. No documents about these discussions were presented to the Tribunal and there was no reference to them in witness statements.
24. Mr Campbell stated that the claimant was, by this time, already an officeholder and so there was no change in status when the claimant moved from Feltham to Hayes. Mr Campbell stated that he did nevertheless tell the claimant that he was an officer. Further, Mr Campbell stated that the fact that Ministers are officeholders is widely known within the respondent’s organisation. Mr Campbell stated this had been the respondent’s practice for “100 years”, it was referred to in the respondent’s Constitution and the claimant would have known this through his induction. Mr Campbell stated that he was always clear and very careful on this when discussing packages with ministers. This account is strongly disputed by the claimant who asserts that at no stage was he informed that the role was one of an officeholder and what the consequences of this were.
25. On the balance of probabilities, I am satisfied that the claimant was informed at the time that he was appointed that the role was that of an officeholder.
26. There was no written contract of employment or job description provided for this role.
27. The claimant was issued with pay slips whilst in this role which detailed payments as “basic” and set out PAYE tax deductions. The payslips were in the name of the respondent. The claimant was regarded as self-employed for national insurance purposes.
28. There were no fixed hours; the number of hours the claimant worked were down to the claimant although the individual church may have had some expectations of the work the claimant should be undertaking. Subject to this, the claimant had high autonomy over his work.
29. A typical week for the claimant included preaching, leading prayer groups, being involved in community activities and related administrative work. I find that the claimant largely set his own timetable outside of preaching obligations on a Sunday. The claimant was largely able to carry out such activities as and when he saw fit.

30. The claimant was provided with living accommodation next to the church.
31. When the claimant wished to take holiday, he would advise the respondent and arrangements would be made to cover for his work whilst the claimant was away.
32. Mr Campbell's statement referred to the respondent as having "*various working arrangements for Ministers*". Mr Campbell's statement cross refers to an extract of 4 pages in the bundle of documents labelled "*Constitution*" in the bundle index. There were no other documents provided to the Tribunal in respect of these "*working arrangements*" or the Constitution. The 4 pages referred to above (marked as pages 36-40 of a longer document) were not focused on in evidence. They provide -

"Working Arrangements

Every Minister in Training shall work under and be bound by the same Working Arrangements as the Minister and also the particular Working Arrangements applying to himself."

"4. Manse

Subject to negotiation with the local church session, should a house or flat be provided by the Church the Minister is required to live in it."

5. Remuneration

"the remuneration of Ministers is paid by reference to scales as approved by the Conference and agreed by the Church Session. Should the offering of the Church be insufficient to meet the remuneration the deficiency may be made up when possible, during the current financial year, provided that no such payment shall be received from any church of which the Minister is no longer in charge."

17 Discipline

"in accordance with Corinthians 6 Civil Courts are not recognised as having jurisdiction in matters of discipline or removal with regard to Ministers who are regarded as Office Holders within the Alliance"

19. Grievances

"in accordance with Corinthians 6 Civil Courts are not recognised as having jurisdiction in matters of grievances raised by Ministers who are regarded as Office Holders within the Alliance"

33. I am satisfied that these rules did apply to the claimant and the documents themselves or access to the documents were provided to the claimant on his appointment and formed part of the agreement the parties made.

34. In his witness statement, Mr Campbell suggested that the claimant was in an employed position prior to his appointment to Hayes in April 2022. In evidence, Mr Campbell confirmed that this was a mistake; the respondent's position was all Ministers and Ministers in Training were officeholders and as such the respondent's position was that the claimant was an officeholder from his appointment at Feltham Christain Centre in November 2019.

Law

35. Section 230 of the Employment Rights Act 1996 (ERA) defines an employee and worker as follows:

(1) "In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) - (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

36. Section 94 ERA, provides *"(1) An employee has the right not to be unfairly dismissed by his employer."*

37. In their closing submissions, both parties referred to only one case – the Supreme Court case of *Preston (formerly) Moore v President of the Methodist Conference 2013 ICR 833 SC*.

38. In this case the Supreme Court considered whether a tribunal had correctly held that a Methodist minister was not an employee for the purposes of an unfair dismissal claim. The Lords determined that in order to determine the employment status of a minister of religion it is necessary to examine the rules and practices of the particular church and any special arrangements made with the particular minister. Whether an arrangement was a legally binding contract depended on whether the parties intended the benefits and burdens of the ministry to be the subject of a legally binding agreement between them. Lord Sumption (paragraph 10) stated -

"the primary considerations are the manner in which the minister was engaged, and the character of the rules or terms governing his or her service. But, as with all exercises in contractual construction, these

documents and any other admissible evidence on the parties' intentions fall to be construed against their factual background. Part of that background is the fundamentally spiritual purpose of the functions of a minister of religion."

39. At paragraph 26, Lord Sumption stated -

"the mere fact that the arrangement includes the payment of a stipend, the provision of accommodation and recognised duties to be performed by the minister, does not without more resolve the issue. The question is whether the parties intended these benefits and burdens of the ministry to be the subject of a legally binding agreement between them. The decision in Percy [2006 ICR 134 HL] is authority of the proposition that the spiritual character of the ministry did not give rise to a presumption against the contractual intention. But the majority did not suggest that the spiritual character of the ministry was irrelevant. It was a significant part of the background against which the overt arrangements governing the service of ministers might be interpreted.... The correct approach is to examine the rules and practices of the particular church and any special arrangements made with the particular minister"

40. In the case itself, the majority concluded that Ms Preston's ministry was a vocation and there was no special arrangement between Ms Preston and the Church to alter the position that her rights and duties did not arise from any contract. The minority drew a distinction between becoming a minister and taking up an appointment (being stationed) with the church. In the minority's view, taking up an appointment gave rise to a contract of employment.

41. Guidance on the approach to adopt in respect of identifying a contract of service has been provided by the higher courts on several occasions. In *Autoclenz Ltd v Belcher and oths* 2011 ICR 1157 the Supreme Court referred to the classic description of a contract of employment as provided by McKeena J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* 1968 1 All ER 433 QBD as amounting to three questions -

- (a) Did the worker agree to provide his own work and skill in return for remuneration?
- (b) Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of employer and employee?
- (c) Were the other provisions of the contract consistent with its being a contract of service?

42. Whether an individual works under a contract of employment or service is determined according to the wording of the statute. The true nature of the agreement must be ascertained and contractual wording, that may not reflect the reality of the day-to-day relationship, must not be allowed to detract from the statutory test and purpose. In *Autoclenz Ltd v Belcher and others* Lord Clarke held:

“So the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part. This may be described as a purposive approach to the problem”.

43. It is necessary therefore to consider multiple factors in deciding whether someone is an employee or a worker, not just the wording of the contract or the intention of the parties.

Discussion and Conclusion

44. In submissions, Mr Roberts referred to the facts of *Preston* as being “so similar” to the current case with regards to the issue of status – the relationship of ministers of the church governed by its constitution and specific arrangements with a particular minister, ministers ordained and then stationed at a particular church, payment of a stipend and provision of a manse - that the Tribunal should follow precedent and find the claimant was not an employee.
45. Mr Corban stressed the importance of the Tribunal approaching the issue of status with an “open mind” (as Lord Hope expressed at paragraph 30 of *Preston*). He stated that the claimant – unlike in *Preston* – had a history of paid employment prior to appointment and it was a “continuing position” when the claimant moved from this role to the trainee pastor’s role at Feltham. If this was a genuine change of status, then the respondent should have been clear about it and advised the claimant to get legal advice at the time. Further, following *Preston*, the rights and duties of the person making the complaint are to be determined by the church’s constitution, and there was insufficient information about the constitution and the claimant’s relationship with the respondent.
46. There is no general presumption against ministers of religion as employees, and each case must be judged on its own facts.
47. There has been extremely limited information provided about the rules and practices of the respondent which govern the claimant’s service. References were made by Mr Campell in evidence to the respondent’s Constitution and Written Rules governing the respondent’s relationship with its ministers, but other than as referred to above, I did not have the benefit of these documents. These issues were not contained in witness statements and were not addressed in evidence.
48. There is no suggestion from the parties that the respondent is not the correct putative employer. The local churches to which the claimant was stationed at different points of the relationship are not separate legal entities.
49. From the evidence available, the respondent’s intention was that the arrangements the respondent enters with Ministers and Ministers in Training were not intended to be legally enforceable. This is historically the position of the respondent. It is evidenced by the extracts of the Constitution that are available which confirm that civil courts were not

recognised as having jurisdiction in matters of discipline or removal with regard to Ministers or in respect of grievances.

50. It is further evidenced when the claimant moved to the Hayes role and the information the respondent submitted about the claimant on the Joining Form – with the word “*officeholder*” being added after the claimant had submitted his section of the form.
51. I am conscious however of the need to avoid placing undue emphasis on the intentions of the putative employer given the potential advantage to them resulting from a finding that no contract exists. I have not therefore focused on the respondent’s intentions but have considered the question objectively, based on an analysis of the relevant circumstances.
52. In terms of the arrangements in respect of the claimant himself, it is agreed that the claimant was initially an employee based at the respondent’s Feltham Christain Centre. He then moved to a full time trainee Pastor role following a redundancy situation. I do not regard the fact that the respondent did not suggest the claimant get legal advice because this change involved a change of status as relevant. The claimant’s representative referred to the position as a “*demotion*.” I do not accept this; it was an offer of a full-time trainee pastor’s position made in the context of a redundancy situation of the claimant’s employed position and at a point in time where the claimant had relatively recently been ordained. The offer was not an offer available to any employee whose role was at risk; it was available only to the claimant and was expressly linked to the fact that he was in the process of completing his Minister in Training programme.
53. The role the claimant undertook once he started as a full-time Minister in Training was different to the role he undertook as a PA in terms of its duties and responsibilities. The role in Feltham was taxed differently to his PA role; there was no employment contract and there was no job description for the role.
54. When the claimant was subsequently appointed to the role at the church in Hayes, the purpose of this role was stated to be to “*lead the Church to the next phase to the glory of our Lord Jesus Christ*.” There was again no job description or written employment contract. There was no negotiation of terms. The purpose of the role (and the earlier position at Feltham) was inherently spiritual.
55. The claimant was given a manse to carry out this work more effectively. Whilst the work was undertaken by the claimant, there were no set hours. The respondent exercised no control over the claimant’s work, what the work involved or when this work was done. The claimant had discretion in terms of holiday. The respondent deducted no national insurance from payments made to him and the claimant classified himself as self-employed for these purposes (unlike when the claimant was a PA to the Senior Pastor).
56. I have found that the provisions of the Constitution which do expressly refer to the civil courts not having jurisdiction in matters of discipline or

removal or in respect of grievances were available to and agreed by the claimant at the point of his appointment.

57. In the circumstances, based on the evidence available to me, my assessment is that this was a relationship between a religious institution and an officer called to serve it. I am satisfied that there was no intention to create legal relations between the claimant and respondent. The parties did not intend the benefits and burdens of the ministry to be the subject of a legally binding agreement between them. As the claimant is not an employee, his claim for unfair dismissal is dismissed.
58. In any event, if an intention to create legal relations had been established, I am not of the view that any contract formed would have been one of employment in the light of the control that the respondent had over the claimant.
59. As the claimant was not an employee, his claim for unfair dismissal is dismissed.

Signed by: Employment Judge Chivers

Signed on: 3 May 2024

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