EMPLOYMENT TRIBUNALS

Claimant: Dillan Egan

First Respondent: Guys and St Thomas NHS Foundation Trust

Second Respondent: Globe Locums Ltd

Heard at: **London Central**

On: **16 and 17 April 2024**

Before: **Employment Judge Bunting**

Appearances

For the Claimant: In person
For the First Respondent: Mr A Ohringer, counsel
For the Second Respondent: Ms Isabel Kiff, contracts manager

RESERVED JUDGMENT

The Judgment of the Tribunal is that :

1. The claimant was not an employee or worker of the first respondent, and the claims against the first respondent are not well founded and are therefore dismissed.

2. The claim against the second respondent is not one that the Tribunal has jurisdiction over, and is therefore dismissed.

REASONS

INTRODUCTION

1. By a claim form received by the Employment Tribunal on 01 December 2021, the Claimant brings a claim against the first respondent under a number of different headings including unfair dismissal and discrimination.

2. The claims that the claimant seeks to bring relate to the end of his claimed employment and the manner in which this brought to an end. For the purposes of the hearing before me, the exact claims do not matter, as it was listed for a preliminary hearing to determine the question of the claimant's employment status.

3. In brief, he states that he was employed by the first respondent, which is an NHS Foundation Trust running an NHS hospital and ancillary services, from 24 May 2021 until 24 August 2021 as a physiotherapist.

4. The first respondent's position is that whilst it agrees that the claimant was working at the hospital at the times stated, he was not employed by them.

5. The second respondent, as it now is, is a Healthcare Recruitment Agency that specialises in, to put it neutrally assisting suitably qualified healthcare professionals secure work in a healthcare setting.

6. The second respondent was originally the third respondent. At that point the second respondent was PB Grape Ltd. They were a payroll company that purported to be the employer of the claimant.

7. In this judgment, I will refer to the first respondent as 'the hospital', the now second respondent as 'Globe' and the former second respondent as 'PB Grape'.

8. The claimant notified ACAS on 11 October 2021 with the certificate being issued on 26 October 2021.

9. An ET3 was received from the hospital (page 36) and from Globe on 05 January 2022.

10. The hospital's ET3 is undated, but the grounds of resistance (page 44) attached to it are dated 07 February 2022.

11. In this, substantive grounds of opposition to the individual complaints are given.

12. In addition, in relation to the employment situation, the hospital states that they did not employ the claimant. Rather, he was supplied to them by Globe (which, it is said, is a 'temporary work agency' for the purposes of the Agency Workers Regulation 2010. To the extent that there was a contract between Paid by Grape and Globe, this was not something that the hospital was aware of.

13. Globe raised the fact that there had not been any ACAS notification to them and, on the face of it, none of the exceptions apply.

14. The only claim raised against them was (see para 37 Particulars of Claim attached to the ET1) was 'Civil Fraud by deception', which was particularised as 'forcing the use of Umbrella Companies where to offset employers liability for ENICs'.

15. A time limit issue was raised and, in relation to the substantive issue, it was said that the claimant had voluntarily used an umbrella company.

Procedural History

16. The case was first listed in the Tribunal on 24 June 2022 in front of EJ Frazer. The claimant attended, as did the hospital through Mr Newcombe, a solicitor.

17. Prior to the hearing, the claimant had indicated an intention to withdraw his claims against PB Grape and Globe. This was ventilated at the hearing. By that point, PB Grape had gone into liquidation.

18. In relation to Globe, it is clear that the claimant was content for the claim to be withdrawn. However, the hospital wished it to continue as Globe:

> "*might have documents relating to the arrangement in question. The Claimant stated that this would not be an issue because he would have access to such documentation and could disclose it to the First Respondent. He was worried that it would be too onerous for him to proceed against three Respondents. There was a question raised about evidence being called on this arrangement. I decided that further to Rule 52 of the Employment Tribunals Rules of Procedure it was not in the interests of justice to dismiss Globe Locums Ltd as a respondent at this stage.*
>
> *If necessary the Tribunal can reconsider the application to dismiss after it has determined the Claimant's employment status. This is because Globe Locum's participation in the proceedings is necessary for the determination of the issue of employment status. I have indicated to the Claimant that in view of his comments about feeling that pursuing claims against more than one respondent would be too onerous, I have requested that he provided with a sources of advice leaflet. I also indicated that I would make directions that the First Respondent would deal with any preparation of the bundle*".

19. EJ Frazer set the matter down for a public preliminary hearing to determine a number of issues.

20. Following that there was a further order, initially dismissing the claims against PB Grape and Globe on the basis of the previous withdrawal, dated 26 August 2022, although this was later amended to confirm that it related solely to the claim against PB Grape.

21. Pursuant to the order of EJ Frazer, there was an open preliminary hearing listed before EJ Moxon on 14 and 15 December 2023 to determine the issues identified by EJ Frazer.

22. It was confirmed that the claimant's case was that he was an employee of the hospital. The hospital's position was that that was incorrect, nor was he was worker for them. Instead, he was an agency worker as defined in Reg 3(1) Agency Worker Regulations 2010. Nobody had attended on behalf of Globe.

23. Following initial discussions confirming the above, the preliminary hearing started. However, at the start of the hearing when the claimant was asked for his address, he stated that he was in the Netherlands. As he could not given evidence from there, the case was adjourned again.

24. At the hearing of 16 April 2024, the list of issues remained as before. Ms Isabel Kiss, a contracts manager at Globe, attended the hearing, and had provided a witness statement in advance.

25. I was concerned as to what her understanding of her position, and the reason for her attendance, was. She stated that she believed that she was there to assist the Tribunal in relation to the question of the claimant's employment status and, specifically, whether he was employed by the hospital.

26. Although that followed from the reason why the case was not dismissed against Globe, and it was understandable why she had attended, it appeared to me that whilst Globe was a full party to the proceedings she was entitled to make any submissions, and call any evidence, that she wished.

27. In the end, she did not give or call evidence, or make formal submissions, although there were points when she was able to give some assistance.

28. The preliminary hearing was heard over two days, with the submissions of the claimant not being finished until shortly half past four on the second day. In those circumstances I indicated that I would give a reserved judgment.

EVIDENCE

29. In coming to my decision, I had the following evidence :

a) The oral evidence of Misbah Mir and Fiona Cathcart on behalf of the Respondent
b) The oral evidence of the Claimant
c) An agreed bundle of documents of 856 pages
d) Copies of witness statements from Ms Mir and Ms Cathcart, as well as from Ms Kiff.
e) A Screenshot of a WhatsApp message from the claimant others at the hospital.

30. Mr Ohringer provided oral submissions after the evidence on behalf of the hospital, as well as a short (5 page) speaking note to assist.

31. Following a break, the claimant made submissions on his own behalf.

THE ISSUES

32. At the start of the hearing there was a discussion as to exactly what the issues were.

33. In June 20022, the following were identified by EJ Frazer:

1.1 Whether the claims of automatically unfair dismissal, wrongful dismissal and the claim under s.1 Employment Rights Act 1996 should be dismissed because the claimant is not entitled to bring them if he were not an employee of the First Respondent as defined in section 230(1) and (2) of the Employment Rights Act 1996.
1.2 Whether the claims of unlawful deductions from wages should be dismissed because the claimant is not entitled to bring it if they were not a worker of the Respondents as defined in section 230(3) of the Employment Rights Act 1996.
1.3 Whether the complaint(s) of unlawful discrimination contrary to the Equality Act 2010 should be dismissed because the claimant is not entitled to bring it if they were not within the “employment” of the respondent as defined in section 83 of the Act.
1.4 The Claimant’s amendment application.

1.5 Whether Globe Locums Ltd shall remain as a respondent or be dismissed as a party to the proceedings.

1.6 The claims and issues that will go forward to a final hearing.

1.7 The listing of the final hearing

1.8 Any directions to be made for the progress of the case to a final hearing

34. At the start of the hearing on 16 April 2024, I confirmed that the issues were as before. This was agreed by the claimant and the hospital, although the claimant stated that there was no amendment application.

35. The claimant's position is that he was so clearly an employee of the hospital that there was no need to complicate matters by a further claim against anyone else. The respondents were content to proceed on that basis.

THE LAW

Employment Status

36. Section 230 of the Employment Rights Act 1996 defines an employee as follows:

> "(1) In this Act "employee" means an individual who has entered 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."

37. A 'worker is also defined, in section 230(4) as follows:

> (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.

38. There are a number of authorities on the question of the employment status of an individual that go back to the 19th Century, although I will start with **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497**. There, McKenna J set out the conditions required for a contract of service, namely that:

    (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.
    (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.
    (iii) The other provisions of the contract are consistent with its being a contract of service.

39. Whilst the language of master and servant may jar to a modern ear, the principles still apply. It is clear that all three of the points above must be present for there to be a contract of service – namely control, personal performance and mutuality of obligation.

40. In relation to this, it is necessary to look at:

    a. The degree of control that the employer has over the way in which the work is performed;
    b. whether there is mutuality of obligation between the parties – i.e. was the employer obliged to provide work and was the individual required to work if required;
    c. Whether the employee has to do the work personally; and
    d. Whether the other terms of the contract were consistent with there being an employment relationship.

41. Other relevant factors include:

    e. The intention of the parties;

    f. Custom and practice in the industry;

    g. The degree to which the individual is integrated into the employer's business;

    h. The arrangements for tax and national insurance;

    i. Whether benefits are provided; and

    j. The degree of financial risk taken by the individual.

42. The burden of proof lies on the claimant to satisfy me that it is more likely than not that he was employed by the hospital.

43. As they were referred to at the hearing on a number of occasions, I shall also set out Regs 3 and 4 of the Agency Worker Regulations 2010:

    4.— The meaning of temporary work agency

    (1) In these Regulations *"temporary work agency"* means a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of—

    (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or

    (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

    (2) Notwithstanding paragraph (1)(b) a person is not a temporary work agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers.

    3.— The meaning of agency worker

    (1) In these Regulations *"agency worker"* means an individual who—

(a) is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and

(b) has a contract with the temporary work agency which is—

(i) a contract of employment with the agency, or

(ii) any other contract with the agency to perform work or services personally.

(2) But an individual is not an agency worker if—

(a) the contract the individual has with the temporary work agency has the effect that the status of the agency is that of a client or customer of a profession or business undertaking carried on by the individual; or

(b) there is a contract, by virtue of which the individual is available to work for the hirer, having the effect that the status of the hirer is that of a client or customer of a profession or business undertaking carried on by the individual.

(3) For the purposes of paragraph (1)(a) an individual shall be treated as having been supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer if—

(a) the temporary work agency initiates or is involved as an intermediary in the making of the arrangements that lead to the individual being supplied to work temporarily for and under the supervision and direction of the hirer, and

(b) the individual is supplied by an intermediary, or one of a number of intermediaries, to work temporarily for and under the supervision and direction of the hirer.

(4) An individual treated by virtue of paragraph (3) as having been supplied by a temporary work agency, shall be treated, for the purposes of paragraph (1)(b), as having a contract with the temporary work agency.

(5) An individual is not prevented from being an agency worker—

(a) because the temporary work agency supplies the individual through one or more intermediaries;

(b) because one or more intermediaries supply that individual;

(c) because the individual is supplied pursuant to any contract or other arrangement between the temporary work agency, one or more intermediaries and the hirer;

(d) because the temporary work agency pays for the services of the individual through one or more intermediaries; or

(e) because the individual is employed by or otherwise has a contract with one or more intermediaries.

(6) Paragraph (5) does not prejudice the generality of paragraphs (1) to (4).

44. These Regulations grant a number of rights to an agency worker, such as the protection against unfair dismissal.

Further Authorities

45. I was referred by Mr Ohringer to three specific authorities – **James v Greenwich LBC [2008] EWCA Civ 35**, **Muschett v HM Prison Service [2010] EWCA Civ 25** and **Plastic Omnium Automative Ltd v Horton [2023] EAT 85**.

46. The claimant in **James v Greenwich LBC** had previously worked full time for Greenwich Council. After a break, she returned to work there through an agency. Her contract was with the agency, but she claimed that she had an implied contract with the Council as she had worked there for five years (switching agency part way through) and had been treated as an employee by the Council. The Employment Tribunal rejected her claim that she was employed as there was no mutuality of obligation between the two, and therefore no contract. An appeal to the EAT was dismissed and Ms James appealed further.

47. The Court of Appeal dismissed the appeal, agreeing that where there was an express contract between that claimant and the agency, and that there was no necessity to imply a contract between the claimant and Greenwich LBC.

48. This was so, notwithstanding that (para 26, summarising her submissions to the EAT):

> Ms James had not chosen to be an agency worker, as she was never given the option of an express contract; that she had virtually no contact with the employment agency; that she had worked only for the one employer, under the directions of which she acted without the intervention of the agency, save as an intermediary for the payment of wages, and by which she was treated as a full time member of staff on a permanent rota; and that her length of service with one end-user well exceeded the period of one year (ie the minimum period of qualifying service for the acquisition of the right not to be unfairly dismissed) from which a contract of service should be implied.

49. In **Plastic Ominum**, Mr Horton worked for Plastic Omnium for more than eight years and was 'fully integrated into' their business. However, this arrangement was operated through a personal services company owned by Mr Horton (and, for some of it at least, his partner). There was a contractual relationship between Plastic Omnium and the company (with no right of substitution) that, in the view of the Employment Tribunal, 'reflected the true agreement between the parties'.

50. The ET concluded that Mr Horton was 'clearly subordinate and dependent' and was therefore a worker.

51. The appeal to the EAT was allowed on the basis that the ET had fallen into error by 'failing to engage with' the question of whether there was a contract between the parties.

52. The EAT commended the formulation of HHJ Taylor in **Sejpal v Rodericks Dental Ltd [2022] EAT 91** that a Tribunal should ask itself the following :

> Accordingly, for an individual (A) to be a worker for another (B) pursuant to section 230(3)(b) ERA:
>
> 1. Has A entered into or work under a contract (or possibly, in limited circumstances ... some similar agreement) with B; and
> 2. Has A agreed to personally perform some work for B.
> 3. Is A excluded from being a worker because:

a. A carries on a profession or business undertaking; and
b. B is client or customer of A's by virtue of the contract."

53. The third case was **Muschett v HM Prison Service [2010] EWCA Civ 25**. Mr Muschett started working on the prison estate as a cleaner. This had been arranged through an agency who he had signed a contract with shortly before starting.

54. That claimant worked from January to May 2007 before being dismissed. His claim for race discrimination was dismissed on the basis that he was not an employee of the Prison Service. In that case, his contact was with the agency and included the following terms :

'The employment business or the client may terminate the temporary worker's assignment at any time without prior notice or liability.

The temporary worker may terminate an assignment at any time without prior notice or liability.'

55. The Court of Appeal held that that was fatal to the claimant's claim.

56. Whilst the Prison controlled him when working and there was no right of substitution, the Prison Service did not pay him and had no obligation to pay him. Further, each party could terminate the contract without notice. In those circumstances, there was no mutuality of obligation.

57. In this case the contractual term was clear, and there was no requirement to imply a contract between the claimant and the Prison Service. That was also fatal to the claim under the Race Relations Act 1976 (the precursor to the Equality Act 2010) that he was working under a contract for services.

58. In addition, the claimant referred me to a number of cases.

59. Firstly was **Pao On v Lau Yiu Long [1979] UKPC 17** which concerned the question of when a contract (in that case between shareholders) would be vitiated by duress and there was therefore no true consent.

60. In relation to duress, Lord Scarman stated :

> Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J. in The "Siboen" and the **"Sibotre" [1976] 1 Lloyd's Rep. 293** at p. 336 that in a contractual situation commercial pressure is not enough. There must be present some factor " which could in law be regarded as a coercion of his will so as to vitiate his consent": loc. cit.
>
> This conception is in line with what was said in this Board's decision in **Barton v. Armstrong [1976] AC 104** at p. 121 by Lord Wilberforce and Lord Simon of Glaisdale— observations with which the majority judgment appears to be in agreement. In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are, as was recognised in **Maskell v. Homer [1915] 3 K.B. 106**, relevant in determining whether he acted voluntarily or not.
>
> At common law money paid under economic compulsion could be recovered in an action for money had and received: **Astley v Reynolds (1731) 2 Str. 915**. The compulsion had to be such that the party was deprived of " his freedom of exercising his will" (at p. 916). It is doubtful, however, whether at common law any duress other than duress to the person sufficed to render a contract voidable: see I Blackstone's Commentaries 12th ed. pp. 130-131 and **Skeate v Beale (1841) 11 Ad. and E. 983**.

American law (Williston, op. cit.) now recognises that a contract may be avoided on the ground of economic duress. The commercial pressure alleged to constitute such duress must, however, be such that the victim must have entered the contract against his will, must have had no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure: Williston, op. cit. paragraph 1603. American judges pay great attention to such evidential matters as the effectiveness of the alternative remedy available, the fact or absence of protest, the availability of independent advice, the benefit received, and the speed with which the victim has sought to avoid the contract.

Recently two English judges have recognised that commercial pressure may constitute duress the pressure of which can render a contract voidable Kerr J. in **The Siboen** (supra) and Mocatta J. in **North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd. [1978] 3 All E.R. 1170**. Both stressed that the pressure must be such that the victim's consent to the contract was not a voluntary act on his part. In their Lordships' view, there is nothing contrary to principle in recognising economic duress as a factor which may render a contract voidable, provided always that the basis of such recognition is that it must amount to a coercion of will, which vitiates consent. It must be shown that the payment made or the contract entered into was not a voluntary act.

61. Then there was **Hopper v Lincolnshire CC [2002] UKEAT 819/01**, which concerned the status of a Registrar appointed by a local authority. The issue was whether Ms Hopper was an employee, or an office holder under the Crown. It was determined that it was clearly the latter and therefore the ET had no jurisdiction.

62. In **Cable & Wireless v Muscat [2006] EWCA Civ 220** the Court of Appeal considered the question of someone who provided their services through a limited company.

63. The factual position is set out at paras 5-9:

    5. During 2001, Mr Muscat was employed as a telecommunications specialist by a company called Exodus Internet Ltd (EIL). In September 2001, EIL wished to reduce the number of its employees in order to facilitate a potential

buyout. It still wished to retain Mr Muscat's services. Mr Muscat was told that he would have to become a 'contractor' and would have to provide his services through a limited company. On 15th October 2001, EIL dismissed Mr Muscat and immediately re-engaged him as a contractor. A company named E-Nuff Comms Ltd (E-Nuff) was set up for the purpose of receiving his pay and car allowance. On the day following his dismissal, Mr Muscat continued to work for EIL as before. He became responsible for his own tax and National Insurance contributions. His pay was increased to take account of those factors. In due course, the ET held that Mr Muscat continued to be employed by EIL after 15th October 2001, as he had been before. That finding was not challenged.

6. In February 2002, EIL was taken over by C& W. The takeover was complete by the end of April 2002. Mr Muscat continued to work as before, although he now worked under the direction of C&W management. Initially, his manager was a Mr Jones; later it was a Mr Steel. C&W supplied Mr Muscat with a mobile telephone and a laptop computer; they paid his mobile telephone bills. Mr Muscat arranged his annual leave with C&W. Within the C&W departmental structure, Mr Muscat was described as an employee and was assigned an employee number. All the equipment he used was paid for by C&W. In due course, the ET held that the takeover by C&W had been a transfer of undertaking to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) applied. Also it held that, on that transfer, Mr Muscat became the employee of C&W. That finding is not now challenged.

7. However, C&W understood Mr Muscat to be an independent contractor. Mr Muscat continued to submit invoices for his services (in the name of E-Nuff) but C&W did not pay them. In August 2002, Mr Muscat was told that C&W did not deal with contractors direct and that he must deal with them through an agency, Abraxas PLC (Abraxas). On 26th July 2001, C&W had entered into an agreement with Abraxas, entitled 'Agreement for Provision of Contract and Permanent Personnel' under which Abraxas had agreed to provide contract personnel for C&W.

8. On 13th August 2002, E-Nuff entered a 'Contract for Services' with Abraxas by which E-Nuff agreed (in part retrospectively) to provide services to C&W for the period 26th April to 31st August 2002. That contract is crucial to this appeal as C&W contend that it changed Mr Muscat's status from that of an employee of C&W to some other status.

9. The most important provisions of that Contract, for the purposes of this appeal were clauses 2(a) and (c). Clause 2(a) provided:

   "This Contract for Services together with the Works Schedule and any attachments shall constitute the entire contract between the company (Abraxas) and the Consultancy (E-Nuff) and shall govern the assignment undertaken by the consultancy. No verbal or other written contract shall be valid."

64. The Court of Appeal upheld the finding of the Tribunal that (para 51) “it was necessary to infer the continuing existence of the employment contract in order to give business reality to the relationship and arrangements between Mr Muscat and C&W. There was no other possible explanation for what they were doing. Also, it was necessary to infer the existence of an employment contract in order to establish the enforceable obligations that one would expect to see in these circumstances”.

FINDINGS OF FACT

65. I was presented with a bundle of documents consisting of 856 pages as well as more than a day of oral evidence. As a consequence, I may not refer to each and every piece of evidence, although I confirm that I have taken account of all the oral evidence and the written evidence that I was referred to.

66. In addition, there were detailed submissions from both sides, with the claimant’s oral submissions lasting several hours. For that reason, I will not set out each and every point relied on by both sides, but will address what I consider to be the most significant points raised in determining the issues that I need to decide.

Credibility

67. I will start with consideration of the credibility of the witnesses.

68. In relation to the claimant, it is clear that he is someone with strong views about the injustice, as he sees it, of the agency worker system. Those are views he is entitled to have of course, and views which I express no view on either way.

69. I consider that he was not deliberately saying anything untrue. However, it seemed to me that his view on the overarching issues in relation to the system has clouded his judgment, and his evidence, to some extent.

70. He was fixed in his views about the iniquities of the system which meant that there were occasions where it was impossible to reconcile his oral evidence with the remaining evidence. Notwithstanding that, he maintained his position rather than consider that he may be incorrect.

71. One example was in relation to his evidence to a previous Tribunal case (case number **1601790/2020 – Egan v Hywel Dda University Local Health Board**). In that case, written reasons were provided by EJ Duncan. In paras 23-25 EJ Duncan records what the claimant's position in that case was, including that the claimant conceded that he was agency worker between June 2019 and March 2020, but that his position changed after that.

72. There does not appear to be any scope for ambiguity in relation to this. It seems to me inherently unlikely that an Employment Judge would incorrectly record someone's evidence on such a critical part of his claim. It is more likely that the claimant made that concession at the time, but has subsequently reviewed his position and now puts a different interpretation on the evidence.

73. However, I do not consider that he was being dishonest and deliberately putting forward a false claim.

74. I also notae that he recognised that some of the events referred to occurred nearly five years ago, and he therefore did not have a completely accurate recollection.

75. There were two witnesses for the respondent. Ms Mir was the Head of HR Services for the hospital. She answered all the questions put by the claimant in a measured and calm way. Whenever she was unsure about something, she would say so.

76. There was no specific challenge to her evidence and no indication that she was trying to do anything other than assist the Tribunal.

77. Likewise, I find that Ms Cathcart, a physiotherapist who was the Associate Director of Rehab and Therapies, was an honest witness who was doing her best to assist.

78. She was subject to a fair amount of implicit, and in my view unwarranted, criticism. As with Mr Mir, Ms Cathcart was careful to not stray beyond the bounds of what she knew and was happy to agree with propositions put by the claimant even if that appeared to be to the detriment of the case of the first respondent.

79. In those circumstances, I consider that she was also clearly a credible and reliable witness.

80. I will consider specific aspects of the evidence where it is necessary. Where there was a difference between the evidence of the claimant on one hand, and Ms Cathcart of Ms Mir on the other, I generally prefer the respondent's witnesses. As stated, they both approached their evidence in a dispassionate way and were wiling to express uncertainty where appropriate.

81. However, I consider that the resolution of the case will largely turn on the written evidence and, in particular, what the contemporaneous evidence shows.

82. With that in mind, I made the findings of fact as set out below.

Findings of fact

83. It was common ground that the claimant was an experienced physiotherapist who worked at the hospital between May and August 2021. There is a dispute as to how the employment ended, but that is not something that I am considering at this hearing.

84. The bundle contained a 'declaration' signed by the claimant on a Globe headed letter, dated 15 April 2019 (page 422), which is when the relationship started. The claimant states that he did not read this in full. Whilst I accept that people often do not read such documents in full, it is more likely than not that the claimant did. This is for two reasons.

85. Firstly, this is a short document, only one page, which makes it much more likely to be read. Secondly, and this applies in relation to the other documents in the bundle, the claimant is someone who clearly takes a keen interest in legal matters and his terms and conditions. It is inherently unlikely that he would sign important legal documents without reading them.

86. Following that, there are examples of the paperwork between the claimant and Globe relating to other placements prior to the one with the respondent. The claimant suggests that there was an attempt by Globe to misrepresent the true position, but I do not see anything in the evidence to support that.

87. Between then, and the engagement with the respondent in 2021, the claimant worked for a number of different hospitals. The claimant relied on his engagement by the Hywel Dda Health Board that gave rise to separate claim. He suggests that the Annual Report for that organisation (page 787) shows that there is a particular issue of disguised employment in a healthcare setting, and the statement (at page 790) that they did not use agency staff.

88. He then moved to Ashford and St Peters NHS Trust (page 434). This placement is something that the claimant placed considerable weight on. However, I do not consider that it assists and, in fact, the background weakens the claimant's case.

89. Each engagement was separate, which can be seen in the documentation provided. Further, as the claimant pointed out, one of his contracts (with Ashford and St Peters) was clearly a contract of employment as was made clear in the assignment confirmation (page 434 – '*as you will be on an employment contract directly*').

90. Given that different assignments had different terms of engagements, there would be no reason for him to have assumed that the engagement with the respondent on this occasion would be of any particular form. Further, it shows that the claimant was

aware that if there was an employment contract, then it would say so. However, he did not at any point seek out a contract of employment with the respondent. This supports the respondent's case.

91. In addition, the claimant suggests that his engagement with Ashford and St Peters shows that Globe was acting as an employment agency, and he then seeks to rely on what happened in his other cases. Whilst there is criticism levied at Mr Corley, even if the claimant's case on these other contracts is accepted, it does not change the situation with the current respondent.

92. If there were different approaches taken to different hospitals, then it is less plausible that the respondent would assume his status when engaged with the respondent. If he did make an assumption, then it would be less reasonable for him to do so.

93. For that reason, I reject the claimant's assertion that his relationship with Globe was that they would advertise jobs with a provider and then they would figure out the logistics, but that it would result in the claimant being employed directly by the provider. There is nothing to support this in their interactions between them.

94. Moving on to the assignment with the respondent, there are WhatsApp messages (page 501) and emails (page 499) between the claimant and Mr Corley (at page 501) starting from 07 May 2021. It is clear that Mr Corley and the claimant were on friendly terms and that Mr Corley's role was to help the claimant secure work in his chosen sphere.

Engagement by the hospital

95. Ms Mir and Ms Cathcart explained the background to the commissioning process in the hospital. They clearly had good knowledge of the position, and I accept their evidence in relation to this.

96. The respondent is a large hospital, employing more than 4,500 people on two main sites. Given that, it is unsurprising that there will be need for temporary cover of various lengths. This would be particularly the case during the Covid-19 pandemic.

97. When someone is engaged by the hospital as an agency worker, this would normally be arranged by a manager in the department with the vacancy. It was confirmed that

this would be governed by the Framework Agreement (RM6161). There are a number of documents set out in the bundle relating to this. These were discussed extensively at the hearing, although I will not set out extensive parts of this as I do not consider that, ultimately, it assists the claimant or the resolution of the issue.

98. The claimant expressed surprise at the relatively lax nature of the commissioning process. However, as Ms Cathcart explained, the level of formality depended on the nature of the post to be filled, and how long the vacancy would be for.

99. The hospital has a number of agencies who are approved to supply staff to them. Globe was one of them. Ms Marsh is a physiotherapist who worked under Ms Cathcart at the time, and was one of the usual points of contact with the agencies that they used.

100. The background to the claimant's engagement can be seen in emails between Gemma Marsh (Therapy Lead for paediatrics for the hospital) and Zara Taylor (Recruitment Consultant at Globe). These are at pages 402 to 421, starting on 04 May 2021, when Ms Taylor emailed Ms Marsh with a list of 'available physios'. Ms Marsh responded on 10 May 2021 seeking cover for two posts.

101. There are a number of redactions in these emails, which was a matter of concern to the claimant. However, it is clear to me that these are redactions relating to people other than the claimant who were other possible candidates for the post. In fact, this can be seen at page 407 where the name 'Emily' had not been reacted. At that point it appears that Ms Marsh had spoken to Emily but she was not able to start when the hospital needed her to and so she asked to be introduced to the claimant. This was on 14 May 2021.

102. The email from Ms Marsh to Ms Taylor was also sent to the HR department. The claimant pointed to this to show that he is an employee.

103. I consider that the claimant is reading too much into this. Ms Mir stated that whilst HR would not normally be involved, but Ms Khan (the representative from HR who was copied in) had experience in working with agencies and dealing with temporary staff. We did not have evidence from Ms Taylor, but it seems to me unsurprising that

she would have copied in HR as a matter of routine when a new member of staff was being engaged, even if there was nothing specific at that point.

104. The claimant was introduced to the hospital by Mr Corley (p501 – WhatsApp 14/05/2021 at 16:40). The claimant spoke to Ms Marsh on 17 May 2021 and reported back to Mr Corley that this had gone well (10.24 on 17 May 2024) :

> *Went well, they seem really lovely and will be a good fit.*
>
> *Provisionally agreed start for next Monday, amazing find really mate thanks.*
>
> *Brompton HR going to chase up with you guys now and sort out the details, I am pretty happy to accept whatever they offer provided it's on or near what I had at Imperial.*
>
> *There is a view of having the contract is extended beyond end of July so quite happy to accept whichever pay platform makes there life easier.*

105. Reading this exchange it can be seen that the claimant was very happy with the job and welcomed the opportunity to work at the hospital. It can also be seen that the claimant was content for matters to be arranged between the hospital and Globe, rather than between him and the hospital (as may have been expected if he was to be an employee).

106. We have the handwritten notes of Ms Marsh for that conversation, although these do not appear to assist with the issue before the Tribunal.

107. Following that meeting, Mr Corley offered to arrange payments through an umbrella company, and it is clear that the claimant was reluctant:

> 17/05/2021, 10:28 - Dillan: Normal payroll is fine, too many headaches right now to be thinking about umbrellas, plus will have a judge wanting payslips in July so best to stick to TempRe or Liaison or whatever if they have.

> 17/05/2021, 10:32 - Luke Corley (Globe): They don't actually have a direct engagement system as they don't tend to take a lot of Locums so haven't set one up. I'll get you setup with an umbrella that gives you payslips if you like? It will be the easiest way to be paid and all you will need to do is complete the application
>
> 17/05/2021, 10:36 - Dillan: Yeah perfect.

108. However, it is equally clear that the claimant agreed to this, and knew that he was not being paid by the respondent. The reply from Mr Corley makes it clear to the claimant that he would be paid by the umbrella company, and not the hospital.

109. The claimant stated that his comment 'Yeah perfect' was sarcastic in nature. Whilst is it hard to judge sarcasm from the written word, it does not appear to be the case. Rather, it appears that the claimant asked not to use an umbrella company but, when told of the difficulties, was happy to so.

110. There is a document called 'Grape Contract – Dillan Egan' that was recorded as being completed by all parties as of 14:03 on 17 May 2021 (pages 505, 513-536). It is signed by the claimant and Leanne Piper on behalf of PB Grape. The claimant has signed it in a number of different places. This is clearly of some significance.

111. The document itself is specific to the claimant and is clearly between him and PB Grape Limited (page 513). Each page has 'paidbygrape.com' at the top of the page, with the same logo and purple text.

112. This related to the means by which the claimant would be paid. The liaison was with Patrick, and we have messages between them at pages 506-511.

113. The claimant now states that this was a 'sham contract', and that he did not consider that this was reflective of the true position, although there is nothing else to support this, and nothing to support his case that that was his view at the time.

114. It is clear that there was a discussion between the claimant and Patrick on 17 May 2021. The next month, the claimant emailed Patrick on 10 June 2021 referring back to that conversation and, specifically, that he was to be paid through an

umbrella company. Patrick replied saying that they were 'expecting payment from your agency tomorrow to process and pay to you'.

115. As stated, the terms of engagement were set by the 'RM6161' which applies national standards for the hiring of staff by the NHS. Copies of the relevant documents were in the bundle. As would be expected, these are extensive, and do not allow for a flexibility or approach such as may exist in recruitment by a private hospital or similar.

116. This also includes the details of how an assignment will be cancelled (para 12, pages 399). The claimant emphasised 12.4 which states that where the assignment lasts 4 weeks or more, and there are no performance issues, the hospital shall provide 7 days notice of the termination.

117. Ms Marsh signed a 'Booking Confirmation' form dated 17 May 2021 for the claimant, with a start date of 24 May 2021 (page 496). This is on Globe headed paper.

118. The claimant stated that he was unsure whether he had had received terms of engagement. I consider it more likely than not that he did so, on the basis that, firstly, this is what would usually happen when someone was assigned to work in the way that the claimant was and, secondly, that the claimant is someone who is much more concerned with his terms and conditions, and paperwork, than the average person.

119. His evidence was that he did not remember receiving it. I consider that that is true, at least in the sense that he has no specific memory of this some five years down the line. However, had he not received this, it is more likely than not that he would have chased Globe for it.

120. The claimant was concerned that the 'Confirmation of Assignment' document (page 654) had been manipulated in some way. This is because the 'properties' toolbox states 'content created' on 23 July 2021, and 'Date last saved' was 27 August 2021.

121. That allegation of fraud is an extremely serious one. I have not been given any expert evidence in relation to this, which I consider would be necessary to make good this point. In any event, there are other reasons that would explain this (for example, as was canvassed at the hearing, the 'date last saved' may well be that

that was the day it was last opened and it was then saved automatically by the computer).

122. I accept that the document at page 654 may be a later version (it is labelled v3.2 not v2.4), but that does not support an allegation of forgery.

123. Any forgery would have required a number of people to be party to it. I see no evidence of forgery, and find on the balance of probabilities that the claimant received the relevant terms of engagement as claimed.

Duress in relation to employment

124. The claimant's case is that he had no choice but to take the work with the hospital. The reasons for this were the economic conditions that he faced.

125. He set out the various factors he relied on. These include that he had been wrongfully dismissed by Hywel Dda and was engaging in a Court case relating to this which required him to go in person for hearings (which was a great expense), he was moving house, there was a longstanding relationship with Globe, he was caring for a close friend, and had run out of money (for which he blames Mr Corley and, by extension, Globe).

126. I accept that at the time he would have had a number of different financial pressures on him. However, I do not consider that this had risen above that to mean that he had no alternative but to accept any offers of work that came his way.

127. The claimant was also critical that he was, in effect, presented with a *fait accompli* as to the arrangement with him, Globe and PaybyGrape. The evidence does show that there was a clear 'steer' towards this by Mr Corley. However, the claimant then accepted that steer. He states that he did so under protest, but I do not consider that this is shown in the evidence. In any event, he took no further steps to challenge the contract or to see if (for example) the hospital would employ him directly.

128. I also reject his claim that this was a sham contract only entered into as a result of pressure. There is no evidence for this in the contemporaneous documentation, all of which indicate that the claimant was pleased to have the opportunity to work at the hospital, and was excited about starting.

129. The best evidence in relation to this is the WhatsApp message sent by the claimant at 10.24 on 17 May 2021 (page 501). There is nothing to suggest that the claimant was unhappy with the arrangements.

130. Although there are examples of difficulties with payments (see page 507), that is something that is not uncommon with people who start employment, or working on a contract basis.

131. I conclude that it is plain that the contract was one that the claimant entered willingly.

132. A further point is that there is a contradiction here in his case. The claim that he was forced into a bad contract with PB Grape (or Globe) which he seeks to have voided (or declared always to have been void) is inconsistent with his claim that there was no contract with them and the true contract was with the hospital. The claimant was not able to recognise, or resolve, this contradiction in the hearing, which is a further example of the rigidity of his approach to the written evidence.

Starting work at the hospital

133. The claimant duly started at the hospital on 21 May 2021. In advance he spoke by email to Tom Tobin, a Specialist Physiotherapist, who told him to arrive for 8.30am where Mr Tobin would meet him. The claimant was told that the hospital would provide him with scrubs to wear.

134. At the time there were still a large number of restrictions caused by the Covid-19 pandemic. Especially in light of that, it is not surprising that the hospital would provide the uniform. This does not assist with his employment status.

135. The claimant states that he received training from the hospital. This is something that Ms Cathcart was unable to assist with either way, although she did note that the nature of such an engagement would be that the person being recruited would already be qualified at the particular band. In those circumstances, and as it was recruitment for a short posting, it is unlikely that any training would be extensive, although the claimant would clearly have to be given some form of instruction.

136. Ms Cathcart accepted that the claimant worked in different posts within the hospital trust and, when he moved from one to the other, he was doing so under the direction of the respondent. Further, the respondent did not go back to Globe to authorise that.

137. When he was working at the hospital, the claimant would complete a time sheet (an example is at page 555) that would be signed off in by someone in the hospital before being passed on to Globe to be processed for payment.

138. Globe would then invoice the hospital (see page 584 for an example) for 'services performed' by the claimant. As noted above, PB Grape, which was the company that had a signed contract of employment with the claimant, was an umbrella company.

139. The claimant would then be paid by PB Grape (an example pay slip is at page 757). These are again headed 'paidbygrape.com' with the same, mainly purple, logo. It is clear that this is distinct from the hospital, and from Globe.

140. The payroll department of Globe emailed the claimant on 03 June 2021 to ask him to provide 'your umbrella company name if you are registered with **if any**' (emphasis added). Mr Corley advised the claimant to say 'Paid by Grape', which the claimant did.

141. At the hearing, the claimant confirmed that he gave his bank details to PB Grape, and not the hospital trust. To explain this, he stated that he thought that the trust would have outsourced payroll to a third party. Whilst that is something that happens, the claimant's account is inconsistent with the fact that instead of approaching the hospital when he had issues with payments, he spoke to Globe. It is also inconsistent with the other written evidence.

142. For example, when the claimant raised concerns about his payslips, he raised this with Globe rather than with the Hospital. He has stated that he considered Globe to have been acting as a recruiting agency but this does not explain why he continued to liaise with them rather with the hospital who were, on his case, his employer.

143. On 14 July 2021 the claimant emailed Mr Corley (page 606) to discuss a number of matters including other potential roles that he was interested in. In relation to the hospital, he said

> *It's coming to the end of the contract with Brompton, we both said start of August worked to re-evaluate. Nothing actually clear but last day presumably July 31st, but not had any discussions with the B8's about extending yet, and my B7s aren't the most forthcoming/experienced with locum staff.*
>
> *Would be happy to extend as team are lovely there, but also always wise to look for a change around this time.*

144. Much reliance was placed by the claimant on the way in which his engagement with the hospital was extended following this.

145. There was an email from Claire Purkiss (the claimant's line manager) to Zara Taylor at 08.28 on 15 July 2021 in which she refers to ongoing gaps and, in light of the claimant's good performance, ask Ms Cathcart (who was copied in): "*Fi can we extend his contract until the end of August?*".

146. Following that, at 09.55 (p645) Ms Purkiss emailed Ms Taylor saying "Please could we extend Dillan until the 10th September if he is available?". Whilst Ms Cathcart could not remember, she inferred (and I accept correctly) that she gave her verbal agreement to that course of action sometime between 08.28 and 09.55.

147. The claimant submits that this is evidence of him having a contract with the hospital, which was being extended. I can see that those words could carry that meaning and, if this was a considered document drafted by a lawyer, then it may be strong evidence of such.

148. However, it is clear to me that this is an informal conversation between two people who are not lawyers and the essence of what was being said was that there was still a gap that needed filling, and the claimant was suitable to fill that gap.

149. Ms Purkiss was not purporting to comment on the nature of the relationship between the claimant and the hospital, she was simply trying to get cover for her busy department. I have no doubt that if a bystander had asked Ms Purkiss and Ms Cathcart what they meant by 'his contract' and what significance that had in terms of employment law, they would have replied that it carried none, and it was simply a shorthand for what was eventually done.

150. Following that conversation between Ms Purkiss and Ms Cathcart, the claimant was re-engaged. I note that the process followed was (p645) Mr Purkiss emailing Globe to arrange this, which supports the respondent's case.

151. The offer came from Mr Corley (page 609) in an email from 15 July 2021 at 09.58am. The claimant accepted this offer in an email back at 13.07 that day (page 610). He raised the question of whether the hospital knew he was having a week off in August 2021 and said to Mr Corley '*Do you mind letting them know*?'

152. Again, that is inconsistent with the claimant being an employee of the hospital, and his contention at the hearing that he believed himself to be an employee of the hospital.

153. Following that, the claimant continued to work at the hospital until 24 August 2021.

Dismissal

154. I need not go into the substance of the dismissal, as that would be a matter for the substantive hearing. The background is that there were a number of issues raised by the hospital that were discussed between the claimant and Ms Purkiss on 23 August 2024, but were not resolved.

155. That led Ms Cathcart to speak to the claimant on 24 August 2024. It was not disputed that the result of this was that his engagement was terminated.

156. I heard evidence from both the claimant and Ms Cathcart in relation to this. It is notable that both are recollecting events from nearly three years ago. In determining

what happened, I consider that it is what happened immediately afterwards that is of most assistance.

157. Later that day, at 1.45pm, Ms Cathcart emailed the claimant (page 618) to summarise the conversation and set out her position :

> I explained I would like to give your agency the one week notice period but you felt you are contracted until the 10th September. After talking to Globe agency they have confirmed we can give them one week notice so I have done that today. Your last day will be 31st August and we will pay you for this week but do not want you to work on site again. Please can you return any trust property, especially your ID badge, as soon as possible to the front security desk on Sydney street in an envelope for the attention of Fiona Cathcart. Once we have received your ID badge and any other trust property we can arrange you last week payment.

158. The claimant forwarded this to Mr Corley five minutes later to Mr Corley, saying:

> Globe have improperly handled this issue as a formal grievance was raised to the hirer and my dismissal occurred only in light of this.
>
> Dismissal and one week's notice is contrary to Agency Workers Regulations Section 17(3)(a) and (3)(b).
>
> Further, I raised this to Fiona who accept it and she stated that in actual fact I would be paid until remainder of contract period.
>
> Globe does not have the authority here to accept a dismissal notice.
>
> Unfortunately, unless rectified this may include Globe Locums in any ensuing Employment Tribunal. May I request that Globe seek guidance from a legal representative and reply to me with haste.

159. Mr Corley replied to inform the claimant that the hospital were in their rights to do so. It is clear that the claimant was upset by this and sent an email to Ms Cathcart (page 621) in strong terms.

160. It is significant that the claimant was not stating that he was employed by the respondent. It is notable that the first thing he did was forward the email to Globe.

161. There was an email from Ms Cathcart to Globe at 11.24am on 26 August 2021 that forwarded the messages of 24 August 2021. Mr Corley replied at 11.48am (page 636) setting out part of the agency agreement where it states that 7 days notice is required. In addition, Mr Corley said:

> Dillan is not employed by the Brompton directly and nor is he employed by Globe Locums directly and as a locum he has no employment rights.
>
> Therefore, you were well within your rights to dismiss him on the notice period you have given.
>
> I have copied in our contracts manager, Isabel, who I have asked to join us this afternoon as she will be better placed to provide information on some of the fine print.

162. Following that, the claimant raised a number of different issues with Paid by Grape (pages 509-511) during which the claimant became increasingly irascible and hostile, including accusing them of criminal activity. He also (31 August 2021 at 14:56) expressed concern that 'PbG and Globe have entered a relationship without me'. He did not rely on this to show that his belief at the time was that he was employed by the hospital, nor do I consider that it shows this.

163. At the same time wrote to Globe in a similar vein (page 643), and made a number of requests for documents as well as trying to persuade Globe that they (rather than PB Grape) were his employer, as least in relation to his attempt to reclaim money allegedly owed to him (page 736 – "*For tax purposes it is deemed that Globe Locums is my employer*"), although this was not resolved to his satisfaction. The last correspondence in the bundle is the claimant's P45 sent on 22 October 2021 (page 750).

164. The claimant relied on the method of dismissal in support of his case. His argument was that what happened was that Ms Cathcart was the person who dismissed him and, as he could only be dismissed by his employer, the respondent must have been employing him.

165. Further, if the claimant had behaved in the way alleged then there was no reason to pay him 7 days. The fact that he was paid for 7 days shows that the arrangement was one of employment.

166. I consider that there is a far simpler explanation, and that is that Ms Cathcart tried to resolve matters with the claimant, but could not. As a result, she terminated the claimant's engagement. When she was doing so, she did not have in mind the intricacies of employment law, or what the exact consequences of what she said at the time may be. Her intention was to resolve what was a difficult situation as amicably as possible. She was happy to pay the claimant a weeks pay to resolve the matter, even if it may be that, in law, he was not entitled to that.

167. The claimant also drew a distinction between him receiving 7 days notice, or payment in lieu of notice. Again, this is not something that I consider can assist at all. It was a fast moving situation in fraught circumstances for Ms Cathcart who was, I find, trying to do her best for all concerned, rather than getting involved in the legal intricacies.

168. I do accept that her understanding at all times was that the claimant was not an employee.

169. Subsequently, the claimant sought to challenge the dismissal, lodging a document headed 'Formal Appeal Against Termination' on 31 August 2021 (page 727). In this he relied upon the Agency Worker Regulations 2010 and made no reference to the fact that he was a direct employee of the respondent.

170. This is a surprising omission on the claimant's part if he was, in fact, employed. It is consistent with what Ms Mir considered his position to be at the time that he was working for the respondent, and is a strong indicator against him being employed by the respondent.

Conclusions

Duress

171. I shall start with the question of duress. As was recognised, this is a very high threshold. I have set out above the test to be applied.

172. It is clear in this case that the claimant entered the contract freely and willingly. There is no indication in the contemporaneous documentation of anything remotely approaching the level of compulsion required.

173. Further, there is nothing to suggest that his circumstances at the time could found an argument that he was forced into a contract out of economic necessity. On the contrary, as noted, the evidence points towards him being an entirely willing participant. In those circumstances, it is clear that this part of the claim cannot succeed.

174. I then turn to the list of issues from the Preliminary Hearing in light of the findings above.

Was the claimant employed by the hospital?

175. The starting point is what is the documentary evidence. Here, there is a contract in writing between the claimant and PB Grape. There is no contract with the respondent.

176. I reject the suggestion that the contract was a sham. The evidence shows that it reflected the situation ‘on the ground’. The claimant had had a number of engagements arranged by Globe previously. On each, he had a notice of engagement, as he did on this one. He is someone who is aware of his rights, and is keen to ensure that they are enforced.

177. There is no evidence at the time he started work that he thought that there was a contract of employment between him and the respondent, and I do not consider that there was anything in what happened when he started work, or when the contract was extended, to give rise to a reasonable belief that he was employed by the hospital.

178. The arrangement that was put in place were standard ones for the industry. At no point at the time did the claimant 'push back' and suggest he was employed, or that he thought that he may be employed. This came about after his dismissal.

179. Whilst there were points around the time that his placement was extended that could be taken to imply a contract of employment, when seen in context there is nothing in this point.

180. The authorities set out above are clear and, I consider, fatal to the claimant's case. Compared with the case of **James v Greenwich**, the claimant's case is much weaker.

181. Here, there is a clear contract between the claimant and PB Grape. There is no need at all to infer a contract between the claimant and the respondent, and all the evidence points to the contractual terms being reflective of the actual situation, and what is common in the industry.

182. In those circumstances, it is unnecessary to give detailed consideration to **Ready Mixed Concrete** and other cases (including **Autoclenz v Belcher [2011] UKSC 11** which the appellant brought up in submissions). Given that the healthcare setting is a highly regulated one, it is clear that the hospital will exercise a large element of control over the claimant. However, that does not change the position.

183. Whilst there was a considerable amount of oral and written evidence in this case, I consider that the case is, at its heart, relatively straightforward.

184. All the documentary evidence points to the fact that the claimant was employed by PB Grape. There is nothing that points away from that, and I see no reason why there is any necessity to imply a contract of employment between the claimant and the respondent.

185. For those reasons, the claimant has failed to show that he was employed by the first respondent, and the claims must be dismissed.

<u>The claim against the second respondent</u>

186. The claim against the second respondent is said to be 'civil fraud by deception'.

187. That is not a claim that can be heard by the Employment Tribunal, and it is not suggested that it is a claim that the Tribunal can hear by any other name.

188. In those circumstances, there is no jurisdiction for me to hear it, and it must also be dismissed.

_____

Employment Judge Bunting

DATE: 08 May 2024

Sent to the parties on:

24 May 2024

…….

For the Tribunal:

M PARRIS

……..

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.