



EMPLOYMENT TRIBUNALS

Claimant: Ms A Brown

Respondent: COOP Group Recruitment Limited

Heard at: Cambridge **On:** 8 August 2024

Before: Employment Judge Davey

Representation

Claimant: In person
Respondent: Did not attend

UPON APPLICATION made by email dated **1 November 2023**, to reconsider the judgment dated **18 October 2023** under rule 71 of the Employment Tribunals Rules of Procedure 2013,

RESERVED JUDGMENT

1. The claimant's application for reconsideration is granted against COOP Group Recruitment Limited. The judgment dated 18 October 2023, is revoked against COOP Group Recruitment Limited.
2. The claimant was an employee of COOP Group Recruitment Limited.
3. The complaint of unauthorised deductions against COOP Group Recruitment Limited for the period between 26 August 2019 and 30 March 2021 for underpaid wages is not well-founded and is dismissed.
4. The complaint in respect of holiday pay is well-founded. COOP Group Recruitment Limited failed to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.
5. COOP Group Recruitment Limited shall pay the claimant **£3,190.54**. The claimant is responsible for paying any tax or National Insurance.

REASONS

Introduction

1. Mutual Group Limited (who was the first respondent when these proceedings were initiated) is in compulsory liquidation. Liquidators were appointed on 21 December 2023. Therefore, proceedings against Mutual Group Limited, including the claimant's application for reconsideration of the judgment sent to the parties on 18 October 2023 under Rule 71 of the Employment Tribunal Rules of Procedure 2013 (ET Rules) cannot proceed and are stayed given that section 130(2) Insolvency Act 1986 provides that when liquidators have been appointed, no action or proceeding shall be proceeded with or commence against the company or its property except by leave of the High Court.
2. This judgment and reasons, refers to Mutual Group Limited (who was the first respondent when I gave oral judgment on 7 September 2023) for the purposes of establishing liability against the COOP Group Recruitment Limited (who was the second respondent when I gave oral judgment on 7 September 2023 and is now the only respondent in the reconsideration proceedings).
3. For clarity and because Mutual Group Limited is not a party in the reconsideration proceedings, in this judgment and with the exception of the background detailed in paragraphs five to twelve below, I have referred to the 'respondents' as they both were at the outset of this claim by their company names rather than as present, former, first or second respondents. This is to avoid confusion. For the avoidance of doubt, only COOP Group Recruitment Limited is a respondent in these reconsideration proceedings.
4. This hearing was listed for one day with the reconsideration application to be determined in the morning and if that application was granted, the claimant's claims to be determined in the afternoon.

Background

5. This case has a substantial history which is summarised below.
6. By a claim form presented on 19 August 2021, the claimant brought claims against Mutual Group Limited and Coop Group Recruitment Limited. The claimant's complaints were for unauthorised deductions from pay and accrued but unpaid holiday pay on termination of employment. There were other claims that were not pursued by the claimant on reconsideration.
7. By a response form presented on 12 October 2021, the respondents

resisted these complaints.

8. There was a final hearing before me on 19 June 2023. This followed a postponement on 18 August 2022 and an adjournment on 23 February 2023. The claimant represented herself and the respondents were represented by Mr Ishmael Musah (manager of Mutual Group Limited).
9. During the claimant's oral evidence, it became apparent there were significant issues with disclosure and evidence and the hearing was likely to go part heard so I adjourned and issued further case management orders, primarily directed at the claimant, which included supplying the tribunal with a statement setting out what her case was about and what remedy she sought. The part heard case was relisted for 7 September 2023 by CVP (at Cambridge).
10. By an email dated 5 September 2023 and sent to the Tribunal at 6.21am, the claimant stated she had been evicted, her telephone was not working and she could provide evidence of post traumatic brain injury and did not know what to do.
11. The claimant did not attend the relisted hearing for 7 September 2023. I decided against a further adjournment because the Tribunal made attempts to contact the claimant on the morning of 7 September 2023 without success. In her email dated 5 September 2023, the claimant did not explicitly request an adjournment nor state she could not attend the hearing. The claimant had not complied with any of the case management orders sent to the parties on 20 July 2023, this was the fourth listing of the case and Mr Musah submitted he was in attendance, wanted to proceed and the ongoing litigation was giving him 'mental health problems'. In accordance with Rule 47 of the ET Rules, I decided to hear the remainder of the evidence (this being a part heard case) in the absence of the claimant.
12. My judgment was to dismiss the claimant's claims against both respondents. I gave oral reasons for my decision at the end of the hearing which will not be repeated here. The written judgment was sent to the parties on 18 October 2023.

Reconsideration

13. By an email dated 1 November 2023, the claimant requested reconsideration. One of her grounds was that she had not been able to attend the hearing on 7 September 2023, because she was evicted on 5 September 2023. At this stage, I was provided with two further emails that the claimant sent to the Tribunal. One of these emails was sent on 5 September 2023, at 6.26am. In this email the claimant notified the tribunal

that she could not attend the hearing on 7 September 2023, because she was being evicted later that day and her mental health was impacted. This was the second of two emails sent (the first sent at 6.21am) on 5 September 2023, referred to above. On the afternoon of 7 September 2023, the claimant emailed the Tribunal to say she now had a phone and email. I concluded that the three emails, when read together and the eviction paperwork provided to the Tribunal gave rise to grounds for the reconsideration application to be considered because it appeared that the claimant was not able to participate in the hearing due to circumstances beyond her control.

14. Rule 70 of the ET Rules empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any judgment where it is necessary in the interests of justice to do so. The claimant's attendance and participation at the hearing on 7 September 2023, may have changed the outcome.
15. By a letter dated 23 January 2024, the parties were notified about my preliminary view on reconsideration and were invited to make representations. Only the claimant responded.
16. By a letter dated 25 April 2024, a reconsideration hearing was listed for 19 June 2024.
17. By a letter dated 18 June 2024, the Tribunal notified the Claimant that her Tribunal claim against Mutual Group Limited was stayed because it is in compulsory liquidation and the claimant would require an order from the High Court granting permission for her to proceed with the claim. The hearing listed for 18 June 2024 was postponed to 8 August 2024 at the Tribunal's own initiative.

Reconsideration hearing on 8 August 2024

18. The hearing commenced late because the claimant was having IT issues and COOP Group Recruitment Limited did not attend. In accordance with Rule 47 of the ET Rules, I decided to proceed in COOP Group Recruitment Limited's absence because it had not engaged with proceedings following the claimant's application for reconsideration, attempts were made by the Tribunal to contact COOP Group Recruitment Limited without success and a further delay in bringing this litigation to an end was not in accordance with Rule 2 of the ET Rules - the overriding objective and with particular reference to Rule 2(d) '*avoiding delay, so far as compatible with proper consideration of the issues*'.

19. The claimant was unable to resolve her IT issues. In accordance with Rule 46 of the ET Rules I permitted the claimant to attend the hearing by phone because it was just and equitable, the Tribunal could clearly hear what the claimant was saying and the alternative would have been to adjourn and relist and this was not in accordance with Rule 2(d). It was in the interests of justice to bring this litigation to an end.

20. At the outset of the hearing, I explained that I would initially consider the application for reconsideration and that because Mutual Group Limited is in compulsory liquidation and the claimant does not have permission from the High Court to proceed with the claim against it, the reconsideration application was limited to COOP Group Recruitment Limited.

21. The claimant had not requested reasons for my decision on 7 September 2023, only reconsideration. I explained the reasons for my decision on 7 September 2023, which included a determination that the claimant was employed by Mutual Group Limited only despite both respondents (as they then were) stating she was employed jointly by them both. At the time I made this decision, both respondents (as they then were) were solvent, employment status was not contested and I dismissed the pay claims in any event so there was no requirement for me to give this matter detailed consideration. I explained to the claimant the significance of her employment status now that Mutual Group Limited is in compulsory liquidation and because the claimant's claim against it is stayed.

22. The claimant submitted that she was seeking reconsideration on the following:
 - a. she was employed by both Mutual Group Limited and COOP Group Recruitment Limited,
 - b. they had joint liability to pay her,
 - c. that she was underpaid wages, and
 - d. that her holiday pay should not have been rolled up so she was owed holiday pay.

23. The claimant confirmed she was not pursuing any other claims against COOP Group Recruitment Limited.

24. The claimant told the Tribunal she does not think she would obtain an order from the High Court to pursue her claims against Mutual Group Limited. The claimant should notify the Tribunal on or before 18 December 2024 whether she intends to pursue proceedings against Mutual Group Recruitment Limited and if so, whether she has made an application to the High Court.

Decision on reconsideration

25. I allowed the reconsideration application against COOP Group Recruitment Limited because I was satisfied that in accordance with Rule 70 of the ET Rules, it was in the interest of justice to allow the application. The judgment sent to the parties on 18 October 2023 is revoked against COOP Group Recruitment Limited.

26. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the ET Rules. Paragraphs 27-38 set out the legal principles which govern reconsideration applications. At paragraph 28, Her Honour Judge Eady QC, as she then was, observed the following:

“The test for reconsideration under the 2013 Rules is thus straightforwardly whether such reconsideration is in the interests of justice. This can be contrasted with the rather more complex system laid down by the provisions of Rules 34 to 36 of the 2004 ET Rules, which governed the review of Judgments and other decisions; in particular, Rule 34(3):

“Subject to paragraph (4), decisions may be reviewed on the following grounds only —

- (a) the decision was wrongly made as a result of an administrative error;*
- (b) a party did not receive notice of the proceedings leading to the decision;*
- (c) the decision was made in the absence of a party;*
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known or foreseen at that time; or*
- (e) the interests of justice require such a review.”*

27. The key consideration is that it must be in the interests of justice to reconsider a judgment. There must be something about the case that warrants a requirement to go back and reconsider. The claimant was unable to attend or participate in the hearing on 7 September 2023, as at the time she was homeless and had no access to the internet (the hearing being by CVP) and no phone. She told the Tribunal that she did not apply for an adjournment earlier because she had hoped though failed to have the warrant for possession suspended.

28. I revoked the judgment dated 18 October 2023, against COOP Group Recruitment Limited. It follows that had the claimant attended the hearing on 7 September 2023, and provided further evidence to the Tribunal, the outcome may have been different.

29. I gave oral reasons for my decision to allow the claimant's reconsideration application and revoke the judgment against COOP Group Recruitment Limited.
30. I then adjourned for two hours to give the claimant the opportunity to produce and send to the Tribunal a statement setting out what her case was about (i.e. why she says COOP Group Recruitment Limited was also her employer, what she says she was owed, over what period and why) as despite numerous case management orders, the claimant had not supplied this information.

Reconsideration of the claimant's claims

31. At the commencement of the afternoon hearing to determine the claims against COOP Group Recruitment Limited the claimant provided the Tribunal with a statement that submitted she was jointly employed by both the Mutual Group Limited and COOP Group Recruitment Limited, that she was owed £9937.25 in unpaid wages and she was owed £3,863.97 in accrued but unpaid holiday pay on termination of employment. The claimant confirmed these were the matters she wanted the Tribunal to reconsider.

The issues

32. The issues for the tribunal to determine are as follows:
- a. Was the claimant a dual employee of Mutual Group Limited and COOP Group Recruitment Limited?
 - b. If not, was the claimant employed by Mutual Group Limited or COOP Group Recruitment Limited?
 - c. Did the COOP Group Recruitment Limited make unauthorised deductions from the claimant's wages and if so how much was deducted?
 - d. Did COOP Group Recruitment Limited fail to pay the claimant for annual leave the claimant had accrued but not taken when her employment ended?

The law

33. Part II, s212, s224 and s230 of the Employment Rights Act 1996 (ERA).
34. Working Time Regulations 1998 (Regs 13, 13A, 14 and 16).
35. Hellyer Ltd v McLeod v Ors; Boston Deep Sea Fisheries Ltd v Wilson and Anor 1987ICR 526, CA. Overarching contracts - There was no 'continuing overriding arrangement which governed the whole of [the parties'] relationship and itself amounted to a contract of employment'.

36. Autoclenz Ltd v Belcher [2011] UKSC 41. What is the intention of the parties in the written contract and what was agreed between the parties (whether expressed or implied).
37. Laugher v Pointer 5 B & C 547. A servant cannot have two masters.
38. Dacas v Brook Street Bureau (UK) Ltd [2004] IRLR 358 this case concerned employment status for the purpose of liability in an unfair dismissal claim. The CA raised the question, though did not answer it, of the possibility of dual employment in a triangular relationship (though not in that case). LJ Mummery commented, obiter, that dual employment would be 'problematic' (para 19) and LJ Sedley commented, obiter, it would 'remain for consideration'.
39. Patel v Specsavers Optical Group Ltd EAT 0286/18, the EAT held that 'it is a well-established principle of employment law that in general terms one employee cannot simultaneously have two employers'.
40. Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd [2005] IRLR 983 The CA established it was possible for both a "general" and a "temporary" employer to have dual vicarious liability for the torts of an individual.
41. Cairns v Visteon UK Ltd UKEAT/0494/06/JOJ The EAT noted the principle established in the decision in Viasystems (above) and acknowledged that the question of dual employment had been raised but not answered by the CA in Dacas but held that this principle (i.e. the extension of liability under tort) did not extend to contracts of employment.
42. Prison Officers Association and ors v Gough and anor EAT 0405/09, where the EAT identified an apparent exception to the rule against dual employment, holding that it is possible for one person to have two jobs with separate employers at the same time, provided that those jobs are compatible with each other.
43. United Taxis Ltd v Comolly and anor and another case 2023 EAT 93, where the EAT held that an employment tribunal erred in finding that a taxi driver who provided driving services for a licensed taxi operator through one of its shareholders was, simultaneously, a worker of the taxi operator and an employee of the shareholder.
44. Robinson-Steele v RD Retail Services Ltd and two other cases 2006 ICR 932, ECJ Generally, rolled up holiday pay (RUHP) is not lawful but there are some concessions where the scheme is 'transparent and comprehensive'.

45. Smith v AJ Morrisroes and Sons Ltd and other cases 2005 ICR 596, EAT
Provided guidelines on RUHP and transparency.
46. Harpur Trust v Brazel 2022 UKSC 21, SC Concerned the calculation of holiday entitlement for part time or irregular workers.

Evidence

47. I had the following evidence from the hearings on 19 June and 7 September 2023:
- a. A trial bundle totalling 324 pages prepared by the respondent which incorporated a witness statement from Mr Musah on behalf of both Mutual Group Limited and COOP Group Recruitment Limited.
 - b. I had 8 emails dated 7 September 2024, one of which included 26 attachments provided by the claimant.
 - c. Notes of oral evidence from the claimant (19 June 2023) and Mr Musah (7 September 2023).
48. I had the following additional evidence for this hearing:
- a. The reconsideration request and supporting evidence.
 - b. I had a statement from the claimant and a few pages of additional evidence.
 - c. Oral evidence from the claimant.

Summary of oral evidence

49. The claimant's contract of employment details both Mutual Group Limited and COOP Group Recruitment Limited as joint employers. The exact wording on the contract is as follows '*This contract is intended to be an overarching and a joint employment contract with Mutual Group Limited Coop Group Recruitment Limited*'. The contract is dated and signed 19 April 2019. At the hearing dated 19 June 2023, the parties confirmed the correct date that employment commenced was 26 August 2019, when the claimant commenced her first assignment and there had been some delays with employment commencing. The later start date is in accordance with the contract of employment (at clause 1.2.6 which states employment commences from the first assignment).
50. To date, I have been provided with conflicting dates upon which the claimant's employment ended. The response form states 26 March 2021, the P45 states 30 March 2021, the claim form states 6 April 2021 and payslips are dated until 16 April 2021. The claimant's oral evidence today was that employment ended on 25 March 2021. The claimant explained that the April 2021 pay slips were invalid because by this time she had left Mutual

Group Limited and COOP Group Recruitment Limited and was working directly for MSI and Mutual Group Limited issued these payslips in error and she was paid by MSI directly for this work and not the respondent.

51. Mr Musah (managing director for Mutual Group Limited) told the Tribunal during all the hearings he attended that the claimant was an employee and jointly employed by Mutual Group Limited and COOP Group Recruitment Limited. This is also stated at paragraph 1 of Mr Musah's statement to the Tribunal made on behalf of both Mutual Group Limited and COOP Group Recruitment Limited. The exact wording of Mr Musah's witness statement in this regard is '*Annie Brown was jointly employed by both respondent 1 and 2*'. Mr Musah, acting for both Mutual Group Limited and COOP Group Recruitment Limited during the hearings in June and September 2023, described the respondents (as they were then) as 'linked umbrella companies'.
52. Mutual Group Limited and COOP Group Recruitment Limited sub-contracted the claimant to an employment agency called MSI. MSI provided the claimant with work with an 'end user'. The claimant is a district nurse, so the end users were usually NHS Trusts.
53. During this hearing, the claimant argued that Mutual Group Limited and COOP Group Recruitment Limited (along with several other companies) operated under an 'overarching company called Knightsbridge' (Knightsbridge Bradford Holdings Ltd) operating from Knightsbridge House, Rooley Lane, Bradford, United Kingdom, BD4 7SQ, which was also the registered address of Mutual Group Limited and COOP Group Recruitment Limited during the claimant's employment. The claimant also highlighted this fact during oral evidence on 19 June 2023 and in correspondence to the Tribunal.
54. During this hearing, the claimant argued that Mutual Group Limited and COOP Group Recruitment Limited were both her employers and/or equally liable to pay her wages. In addition to the contract of employment, the claimant relied on several documents submitted during this hearing in support of this assertion. These were three emails (dated 5 September 2019, 7 June 2021 and 17 June 2021, her payslips and a document from HMRC dated 4 June 2021). The first document was an email dated 4 September 2019. Her evidence was that the signature in the email stated 'Mutual Group Limited T/A Coop Group is supervised by Knightsbridge Accountants. This email address is 'payroll@coopgroup.org.uk' and www.coopgroup.org.uk is listed as the website address. The claimant also relied on an email dated 7 June 2021 sent to payroll@coopgroup.org.uk and 'Ben Smith' from Knightsbridge Accountants. The email is the last in a chain and is about the claimant obtaining her payslips, confirmation of employment details, P45 and confirmation of her tax code. The claimant also relies on an email dated 17 June 2021 from her accountant, Mr Keith

Loader. This was in connection with her tax code 'K84X' which she submitted was allocated by HMRC because she was deemed by HMRC to have two employers 'Coop Group' and then from April 2021, 'Mutual Group' with both coinciding in their documents resulting in two employers.

55. The claimant also relied on her payslips, which were issued by Coop Group and page one of a document (the second page was not included) that she received from HMRC dated 4 June 2021, that listed one of her employers for the tax years 2019/2020 and 2020/2021 as Coop Group Recruitment Limited. Mutual Group Limited are not detailed on page one of this document.

Unauthorised deductions claim

56. The claimant went on to set out that the correct rate of pay was £32 per hour (the umbrella rate) and not £26 per hour (the PAYE rate) which is what she told the Tribunal she was paid and that during the financial year 2019/2020 she worked 1050 hours and during the financial year 2020/2021 she worked 1008 hours. The claimant calculated a pay deficit of £9,937.25 based on an underpayment of her hourly rate of pay only. The claimant did not provide any additional evidence to support her pay claim, why she should have been paid £32 per hour, which she purported to be 'the umbrella' rate'. Neither did the claimant accept that the 'umbrella rate' was payable to Mutual Group Limited and/or COOP Group Recruitment Limited to cover the cost of running the umbrella companies.

Holiday pay claim

57. Mutual Group Limited and COOP Group Recruitment Limited operated a system of rolled up holiday pay (this was confirmed by Mr Musah during earlier hearings and supported by the documents in the bundle). The claimant signed an opt out form dated 9 April 2019, which meant her holiday pay would not be banked and instead, she would receive holiday pay as part of her wages. If she had not opted out, a running total of her holiday entitlement would have appeared on Mutual Group Limited's invoice to the claimant (there was a section specifically for this). The claimant confirmed that her holiday year was from 1 April until 31 March and this was in accordance with the contract of employment at paragraph 4.4.

58. The claimant did not dispute that Mutual Group Limited and COOP Group Recruitment Limited operated a system of rolled up holiday pay. However, she disputed it was lawful. Further, she contended there was no evidence she had been paid for holiday on her pay slips and that she should have been paid holiday at a rate of 12.07%. She calculated outstanding holiday

payments for the holiday year in 2019/2020 to be £1451.55 and in 2020/2021 to be £2412.42 based on an hourly rate of £32.

59. The claimant conceded that the £9,937.25 she alleged she was owed in unpaid wages may include her holiday pay.
60. Due to the technical difficulties experienced by the claimant in both the morning and the afternoon and because I allowed the claimant two hours (which included lunch) to produce a statement detailing what her case was about there was not enough time to deliver oral judgment. I reserved judgment.

Relevant law and conclusions

61. COOP Group Recruitment Limited did not attend this hearing. The notification was sent to its registered address and the Tribunal tried to contact COOP Group Recruitment Limited prior to the commencement of the hearing without success. It follows that my findings of fact are made without the benefit of further evidence from COOP Group Recruitment Limited and with specific reference to the claimant's submissions on liability as presented during this hearing.
62. The claimant was employed from 26 August 2019 until 30 March 2021. It was common ground between the parties this was the correct start date and is in accordance with the contract of employment at clause 1.2.6. There was some confusion about the claimant's last day of employment. It is of note that the parties agreed that the claimant's employment ended in March 2021 and not April 2021 and I accept this. I find that the claimant's employment ended on 30 March 2021, as detailed on her P45. This is the most neutral document so in my finding, the most reliable. This has implications for my earlier findings on the claimant's holiday pay claim due to the holiday leave year being between 1 April and 31 March.
63. It was common ground between the parties that the claimant was an employee (albeit of both Mutual Group Limited and COOP Group Recruitment Limited which I will turn to) and she is described as such in the contract of employment. The contract of employment is described as a 'overarching contract' and Mutual Group Limited and COOP Group Recruitment Limited are both umbrella companies. The contract describes the claimant as an 'employee' throughout the contract, acknowledges continuity of employment at clause 1.2 which commences with the first assignment (clause 1.2.6), requires the claimant to accept assignments offered (1.3.10) and acknowledges mutual obligations between the parties when the claimant is not working on an assignment (clause 1.3.11). As such, the contract of employment continues to exist when the claimant is not

working on an assignment, so she was able to establish continuity of employment under s.212(1) ERA and accrue employment rights as an employee. The evidence provided by the parties confirmed the claimant worked most weeks. I find that the claimant was an employee because there was an ongoing mutuality of obligation irrespective of whether the claimant worked on an assignment or not (Hellyer Ltd v McLeod v Ors; Boston Deep Sea Fisheries Ltd v Wilson and Anor). Further, the claimant's employment status as an employee was common ground between the parties.

Dual employment

64. The claimant is asking the Tribunal to find that COOP Group Recruitment Limited was equally liable for her pay claims as an employer. The claimant does not dispute she was an employee of Mutual Group Limited. In the circumstances, the issue for me to decide is whether there was a dual employment relationship (i.e. whether she was employed simultaneously by two employers in respect of the same work) in this case, both Mutual Group Limited and COOP Group Recruitment Limited. Further references to 'dual employment' is to be interpreted as a reference to simultaneous employment in respect of the same work at the same time with two employers (Mutual Group Limited and COOP Group Recruitment Limited).
65. Mutual Group Limited is a company that was incorporated on 6 March 2017 under the name Co-op Group Limited (company number 10653796). The nature of the business is listed as 'temporary employment agency activities'. The name changed to Co-op Group of Bradford Ltd on 11 December 2017 and then to Mutual Group Limited on 25 May 2018. The company's registered address was Knightsbridge House, Rooley Lane, Bradford, United Kingdom, BD4 7SQ until it entered compulsory liquidation whereby the registered address changed to that of the liquidators.
66. COOP Group Recruitment Limited is a company that was incorporated on 10 May 2017 (company number 10763674). The nature of the business is listed as 'temporary employment agency activities' and 'Other activities of employment placement agencies'. The company's registered address is Knightsbridge House, Rooley Lane, Bradford, United Kingdom, BD4 7SQ. The company is still active.
67. It was common ground between the parties that the claimant was jointly employed by Mutual Group Limited and COOP Group Recruitment Limited and some of the documentary evidence (including the contract of employment) supports this.
68. Notwithstanding the intention of the parties, it is a well established principle of employment law that a servant cannot have two masters (Laugher v

Pointer). Recent caselaw has followed this principle (Patel v Specsavers and United Taxis Ltd v Comolly).

69. Most of the caselaw that reviews the principle against dual employment involves triangular arrangements between companies and to what extent a worker can be simultaneously employed by both an agency/umbrella company and/or an end user (Cairns v Visteon). These cases often arise where employment status is in dispute. Alternatively, there may be a requirement to imply a contract of employment out of necessity (Dacas v Brook Street).
70. Turning to the caselaw that seeks to establish the possibility of dual employment. Viasystems confirmed the general principle that having dual employment with two employers was problematic, but for the purposes of tort, liability could be shared by both a permanent employer and temporary employer as both exercised control over the negligent workmen. In Dacas v Brook Street dual employment was not in issue though LJ Sedley (paragraph 78) referenced the possibility of 'a trilateral contract of service, meaning simply a contract in which one side's obligations are divided or shared between two of the three parties, would also remain for consideration', this was not explored further. In Prison Officers Association v Gough the EAT considered it was possible for one person to have two jobs with separate employers at the same time, provided that those jobs are compatible with each other
71. It is of note that the claimant is not asking the Tribunal to imply a contract of employment between her, her agency (MSI) and/or an end user (NHS trust). She is asking the Tribunal to recognise the stated intention of herself, Mutual Group Limited and COOP Group Recruitment Limited as evidenced in the contract of employment and confirmed in oral evidence by the claimant (during this hearing and on 19 June 2023) and in oral evidence by Mutual Group Limited and COOP Group Recruitment Limited (during all hearings attended by Mr Musah on behalf of both respondents, as they were then). Unlike most of the recent caselaw in this area, there is no dispute between the claimant, Mutual Group Limited and COOP Group Recruitment Limited as to employment status or dual employment status.
72. Both Mutual Group Limited and COOP Group Recruitment Limited were registered from the same address and from the evidence, there appears to have been an overlap in the undertakings of both companies, both worked together interchangeably and were described by Mr Musah as 'linked umbrella companies'. The nature of the business of Mutual Group Limited and COOP Group Recruitment Limited as detailed on the Companies House website and reflected in the work undertaken is 'temporary employment agency activities'. The paperwork in this case also supports

that the two companies worked interchangeably, policies were issued by Mutual Group Limited, invoices were sent to Mutual Group Limited, pay slips were issued by COOP Group Recruitment Limited and HMRC documents name both companies. The difficulties that would usually arise with dual employment, such as who exercises control and who is liable for decisions were clearly meant to be shared by both Mutual Group Limited and COOP Group Recruitment Limited as confirmed by the response form, the contract of employment and in Mr Musah's oral evidence. Further, Mr Musah represented both Mutual Group Limited and COOP Group Recruitment Limited at all the earlier hearings.

73. The potentially 'problematic' nature of dual employment (referred to by LJ Mummery, paragraph 19 in Dacas) did not arise in this case, the claimant worked under this arrangement for 20 months without issue, the relationship with Mutual Group Limited and COOP Group Recruitment Limited was primarily administrative, the claimant's dealings with both companies was often via their accountants 'Knightsbridge' who were responsible for arranging payment and she would have taken her orders on a day to day basis from the end user (the NHS trusts where she worked as a nurse) rather than from either or both Mutual Group Limited and/or COOP Group Recruitment Limited.
74. I find that the claimant held dual employment status with both Mutual Group Limited and COOP Group Recruitment Limited between 26 August 2019 and 30 March 2021 (her period of employment) because it was common ground between the parties, it reflected the way both Mutual Group Limited and COOP Group Recruitment Limited operated on a day to day basis as 'linked umbrella companies' and is supported by the contract of employment so is not disputed. Further, it was the stated intention of the parties and was agreed between them that the claimant held dual employment (Autoclenz).
75. This decision is revised from the earlier decision given in oral judgment on 7 September 2023. At the time, I did not have the claimant's evidence in this regard and as Mutual Group Limited and COOP Group Recruitment Limited were solvent and I dismissed the claims in any event, it was not a significant issue.
76. It is an established principle of contract law that where more than one party has assumed liability under a contract for the same obligation, they are jointly liable. This means if one party becomes insolvent as is the case with Mutual Group Limited, the whole obligation passes to the other party, in this case, COOP Group Recruitment Limited. The claimant is entitled to pursue her pay claims in their entirety against COOP Group Recruitment Limited.
77. The claimant was an employee of COOP Group Recruitment Limited. Whilst it is acknowledged that the claimant was employed by both Mutual Group Limited and COOP Group Recruitment Limited at the material time, the

remainder of this decision focuses on the liability of COOP Group Recruitment Limited only.

Unauthorised deductions of pay

78. Turning to the unauthorised deduction of pay claim. The claimant alleges COOP Group Recruitment Limited made unauthorised deductions to her wages throughout her employment (26 August 2019 until 30 March 2021) by not paying her the correct hourly rate of pay. She alleges she should have been paid £32 per hour and not £26 per hour, which she says she was paid. The only evidence supporting this was the claimant's statement. She has supplied no other documentary evidence. COOP Group Recruitment Limited did not attend this hearing to provide evidence about the hourly rate. I have reviewed the documentary evidence. The payslips do not provide the hourly rate. The contract of employment stipulates the national minimum wage unless a higher rate has been agreed. It was common ground that the claimant was never paid the national minimum wage. The only evidence of the hourly rate is in the Mutual Group Limited invoices and MSI 'self-bill invoice/remittance' that both detail the rate of £26 per hour. The claimant acknowledges she was paid £26 per hour.

79. Based on the evidence before me, I find that the claimant's hourly rate was £26 per hour which she concedes she was paid.

80. COOP Group Recruitment Limited did not make an unauthorised deduction from the claimant's pay between the period 26 August 2019 until 30 March 2021.

Holiday pay

81. In my oral judgment dated 5 September 2023, I concluded the claimant's employment ended in April 2021, because she had stated this on her claim form and because there were pay slips issued by Mutual Group Limited up to 16 April 2021. Prior to 1 April 2021, payslips had been issued by COOP Group Recruitment Limited.

82. Those pay slips issued from April 2021, i.e. in the new holiday year, together with the invoices from Mutual Group Limited, detailed holiday entitlement, apportioned holiday pay, specifying the exact amount of holiday pay on the pay slip. Consequently, I held that whilst rolled up holiday pay was generally unlawful, there were some concessions where the scheme was transparent and comprehensive (*Robinson-Steele*) and from April 2021, the rolled up holiday pay scheme was transparent and comprehensive so therefore acceptable. I further concluded that as this was a holiday pay claim for pay in lieu on termination of employment, the claimant is only entitled to pay for

accrued holiday in the leave year in which her employment terminated. That limited entitlement to holiday pay for April 2021 only, for which the claimant, according to her pay slips for April 2021, had already been paid. Further, I did not have the benefit of her evidence or a statement setting what she was owed and why, so I dismissed her claims.

83. During this hearing and confirmed by the claimant's oral evidence, I found that the claimant's last date of employment was 30 March 2021, so the relevant leave year for the purpose of accrued but unpaid holiday pay on termination of employment was 2020-2021 and not 2021-2022.
84. The payslips available to me from the bundle for 2021-2022 do not have a section setting out whether any of the claimant's wages represent holiday pay. This was contrary to the scheme operated by Mutual Group Limited and COOP Group Recruitment Limited as detailed on the 'Annual Leave Pay Advance Form' that states 'such advances will be shown on my payslip'. Mr Musah acknowledged that COOP Group Recruitment Limited (who issued the pay slips during the claimant's employment) had failed to do this. Consequently, there is no evidence the claimant received payment for holidays under the RUHP scheme.
85. My finding is that COOP Group Recruitment Limited operated a rolled up holiday pay scheme that was not sufficiently transparent and comprehensive (*Robinson Steele*). The claimant is entitled to holiday pay accrued but not taken on termination of her employment.
86. This is a claim for failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended. The claimant's employment ended on 30 March 2021. The claimant's contract of employment does not allow her to carry over holiday entitlement into a new leave year. The Working Time Regulations (WTR) do not allow a worker to carry over holiday entitlement into a new leave year (Regulation 13(9a) WTR) except in limited circumstances (Regulation 16 WTR) none of which apply to the claimant. This limits the claimant's accrued holiday pay claim to outstanding holiday from 1 April 2020 until her employment ended on 30 March 2021 (Regulation 14(2) WTR).
87. For the avoidance of doubt, the claimant is not entitled to accrued and unpaid holiday pay for the holiday year commencing on 1 April 2019 and ending on 31 March 2020 because she has neither a contractual nor statutory entitlement to carry over accrued but untaken holiday entitlement.

88. The claimant is entitled to accrued holiday pay for holiday accrued but not taken on the date the claimant's employment ended for the leave year commencing on 1 April 2020.

Calculation of entitlement

89. The evidence provided by Mr Musah on behalf of Mutual Group Limited and COOP Group Recruitment Limited during the earlier hearings was difficult to follow, the bundle was not chronological and/or documents were not in categories. It could best be described as 'shuffled'. The claimant's evidence was also difficult to follow, incomplete and in no order. Neither party adequately complied with case management orders. There are only 21 payslips provided in the bundle for the holiday leave year 2020-2021 and 11 for the year 2019-2020. There are missing payslips. The payslips do not include the hours worked or the rate of pay.
90. Based on the limited evidence available to me coupled with the very real possibility that neither party would be able to supply a complete set of payslips or provide evidence to confirm exactly how many weeks/hours the claimant worked and taking into consideration Rule 2 of ET Rules, specifically the requirement to (b) deal with cases proportionately to the complexity of the issues, (d) avoid delay so far as is compatible with the proper consideration of the issues and (e) save expense coupled with COOP Group Recruitment Limited's failure to engage with the reconsideration process, I consider that listing a remedy hearing in the case would be disproportionate, cause delay and given the amount of time this case has been running, there must be a decision that includes an award. On that basis, I will use the claimant's calculations of hours worked for the leave year 2020-2021 and the evidence available. The claimant's hourly rate at the material time was £26 per hour. The claimant's evidence was that she worked 1005 hours during that leave year and I do not have evidence to rebut that so it is accepted. This is a total of £26,130.
91. The claimant's evidence which is accepted was that she took no paid annual leave, did take some unpaid time off and worked most weeks.
92. The claimant's submission is that her holiday entitlement is calculated as 12.07% of her pay which is based on the statutory minimum entitlement of 5.6 weeks. This method of calculation is not correct. The correct method is set out below.
93. The claimant left employment with Mutual Group Limited and COOP Group Recruitment Limited on 30 March 2021 so worked exactly 52 weeks in the leave year 1 March 2020-31 March 2021. The claimant's employment terminated in the leave year. Therefore, she is entitled to pay in lieu of accrued but untaken holiday entitlement for the leave year commencing 1

April 2020 until her employment terminated on 30 March 2021 (Regulation 14(2) WTR).

94. The claimant is entitled to a total of 5.6 weeks per leave year comprising of 4 weeks annual leave (Regulation 13 WTR) and 1.6 weeks additional leave (Regulation 13A WTR). This equates to her leave entitlement over a 52 week period. The claimant's contract of employment did not provide for a more generous entitlement to annual leave.
95. The claimant was an irregular worker so is entitled to be paid at the rate of an average week's pay (Regulation 16, WTR) which relies on a 52 week reference period (Reg 16(3)(e)(ii) WTR). Only weeks actually worked are used in the calculation (s224(3) ERA, as confirmed in *Harpur Trust*).
96. I find the claimant worked 46 weeks in the leave year 2020-2021. I make this finding because the bank statements suggest the claimant took 5 weeks off work between late December 2020 and January 2021 and 1 week in February 2021. This aligns with the claimant's evidence she worked most weeks.
97. As the claimant only worked 46 weeks in 2020-2021. I should count back six more weeks (Regulation 16(3)(e)(ii) WTR) to establish a 'week's pay'. There are only 9 payslips from the previous leave year (and only 2 in 2020) so this does not assist with reference to calculating the 52 week reference period. The claimant's evidence was that she worked 1050 hours in the leave year 2019-2020. $1050 \times £26 = £27,300$. The claimant commenced employment with the respondents on 26 August 2019 so there were 209 days in that leave year which equates to 31 weeks complete weeks. This averages £880.65 per week. Whilst there are only limited payslips for this leave year, they do not support 'a week's pay' to be this high.
98. The claimant worked 1008 hours over a total of 46 weeks in the leave year 2020-2021. $1008 \text{ hours} \div 46 = 21.91 \text{ hours per week} \times £26 = £569.74$. This is a week's pay for the purposes of Regulation 16 WTR. As detailed in paragraph 97 above, there is insufficient evidence to count back into the leave year 2019/2020. Consequently, I have relied on calculations for the leave year 2020-2021 only when calculating a week's pay in accordance with Regulation 16 WTR because this evidence is more reliable.
99. The claimant is entitled to be paid 5.6 weeks accrued but outstanding holiday pay in the leave year 2020-2021. A week's pay is £569.74. $£569.74 \times 5.6 = £3190.54$.

100. The claimant is entitled to **£3190.54** in accrued but unpaid holiday on termination of employment.

Summary

101. Reconsideration of the decision sent to the parties on 18 October 2023, is granted. That judgment against COOP Group Recruitment Limited is revoked.
102. The claimant was a dual employee of both Mutual Group Limited and COOP Group Recruitment Limited, both of whom had joint liability to her in contract. The claimant is entitled to pursue her pay claims against COOP Group Recruitment Limited in their entirety. She cannot pursue any claims against Mutual Group Limited because it is in compulsory liquidation and the claimant's pay claims against it are stayed.
103. The claimant should notify the Tribunal on or before 18 December 2024 whether she intends to pursue proceedings against Mutual Group Recruitment Limited and if so, whether she has made an application to the High Court.
104. The claim for unauthorised deductions from wages against COOP Group Recruitment Limited is not well founded and is dismissed.
105. The claim for holiday pay for the leave year 2019-2020 COOP Group Recruitment Limited is not well founded and is dismissed.
106. The claim for holiday pay for the leave year 2020-2021 against COOP Group Recruitment Limited is well founded. COOP Group Recruitment Limited must pay the claimant the sum of £3,190.54. The claimant is liable for making payment of tax and national insurance

Employment Judge **Davey**
Dated 28/10/2024

JUDGMENT SENT TO THE PARTIES ON
4 November 2024

FOR THE TRIBUNAL OFFICE