



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Lilia Mouhoubi

**Respondent:** Grant Thornton

## **Record of an Attended Preliminary Hearing at the Employment Tribunal Audio Recorded by CVP**

**Heard at:** Nottingham

**Heard on:** 11 March 2025

**Before:** Employment Judge Broughton (sitting alone)

### **Appearances:**

**Claimant:** In Person

**Respondents:** Mr Mohamed, Solicitor

# JUDGMENT

1. The Claimant was a worker but **not** an employee as defined by section 230 Employment Rights Act 1996.
2. Because the Claimant was not an employee, the Tribunal does not have jurisdiction to deal with the following claims and they are accordingly struck out:
  - 2.1 The claim of automatic unfair dismissal pursuant to section 103 ERA.
  - 2.2 The claim for a redundancy payment.
  - 2.3 The claim for breach of contract

# REASONS

- 3 The Claimant submitted her claim on 27 March 2024 following a period of Acas early conciliation from 22 January to 4 March 2024.
- 4 There was a Telephone Case Management Hearing on 4 September 2024 when Employment Judge Heap discussed the complaints with the parties and identified that the following complaints had been advanced:
  - (a) Automatic unfair dismissal for whistleblowing or alternatively whistleblowing detriment.
  - (b) A redundancy payment.
  - (c) Breach of contract with regard to notice pay.
  - (d) Unpaid wages.
  - (e) Unpaid holiday pay.
  - (f) Bullying.
- 5 As Employment Judge Heap set out in her record of the hearing, the Claimant had been working for the Respondent for just short of one month and it was pointed out to her in that in order to bring an 'ordinary' unfair dismissal claim she must have at least two years continuous service.
- 6 Employment Judge Heap went on to explain, that there is an exception to this in the case of a claim brought pursuant to section 103A of the Employment Rights Act 1996 ("ERA"), a claim of automatic unfair dismissal for whistleblowing however it was also explained, to the Claimant that she would have had to have been an 'employee' in order to bring a claim of that nature and the Respondent contends that the Claimant was not an employee, although it accepts that she was a worker within the meaning of section 230(3) of the ERA.
- 7 There was some discussion at that hearing as to whether or not the Claimant was contending that she was an employee rather than a worker and an order was made requiring the Claimant to confirm her position in writing 14 days thereafter.
- 8 Employment Judge Heap had remarked at paragraph 8 of her orders, that from what the Claimant had told her at the hearing it was probably unlikely that she would meet the definition of an employee, not least because she accepted that she was free to choose her own assignments and she was under no obligation by the Respondent to accept work.
- 9 It was, however, identified that she could still have a complaint of 'whistleblowing' related detriment contrary to section 47B of the ERA, which only requires the Claimant to have worker status.
- 10 The Claimant was also required within 14 days to provide details of her 'whistleblowing' complaint.
- 11 The matter was listed today to determine the employment status of the Claimant, whether she was an employee or a worker and whether the claim should be struck out on the grounds that it has no reasonable prospect of success or whether any claim should be the subject of

a deposit order.

- 12 The Claimant had written in following the Case Management Hearing on 20 September 2024 maintaining her claim that she was an employee and also providing some further details of her whistleblowing complaint.
- 13 The Claimant attended today without representation.
- 14 The Respondent was represented by Mr Mohamed, a solicitor and also in attendance was Mrs Laura Brierley who is employed by Grant Thornton Services LLP.
- 15 The Claimant had produced a very brief witness statement consisting of 7 short paragraphs and running to half a side of A4. Mrs Brierley had produced a more extensive and detailed witness statement. There was also an agreed bundle of 193 pages which included various relevant contractual documents.
- 16 At the outset of today's hearing I explained to the parties what the issues were that we needed to deal with today and also explained to the Claimant that if I decided that it is appropriate to make a deposit order I must take into account her means if she was prepared to provide me with evidence of them. The Claimant had not produced a statement or any evidence AS to her financial means, however I explained that if she wished to do so she may give oral evidence. In the event we did not have time today to deal with the issue of strike out or a deposit order and, therefore, this is a matter that we will need to return to if appropriate.
- 17 I went over in brief the various claims which have been identified and the impact on those claims of a finding that the Claimant was a worker or employee.
- 18 In terms of the whistleblowing claims I reiterated that even if she was found not to have had employee status and, therefore, cannot pursue a claim of automatic unfair dismissal under section 103A, she could still pursue a detriment claim under section 47B ERA. I therefore asked the Claimant to clarify what she says the detriments are that arose from her alleged whistleblowing complaint and she identified those as being three-fold:
  - (1) The cancellation of the assignment that she was working on. This assignment was to end on 1 December 2023 but was ended early without notice. The Claimant alleges that she had been in discussion with the Respondent about extending that contract.
  - (2) She had also been in discussion about a further assignment with another client in Birmingham and she complains that she this assignment was not in the event, given to her.
  - (3) She also complains that there had been discussion about a 6-month placement with Oxford University which she was not ultimately offered.
- 19 In terms of a redundancy payment, the Claimant was unable to identify any basis for maintaining that she would be entitled to a redundancy payment if she was held not to be an employee (and she does not in any event have 2 years-service). She does not assert for example there was any contractual entitlement to such a payment.
- 20 In terms of unpaid pension, Mrs Brierley in her evidence confirmed that the Claimant was entitled to auto-enrolment into the pension scheme but she was unable to confirm whether or not the Claimant had opted out. Mrs Brierley explained that she would need to check. Mr Mohamed raised that the last payslip showed no pension contributions by the Respondent or the Claimant. In terms of notice the Claimant was unsure of what actual notice she was

maintaining she was entitled to. The Claimant informed me that she would have to review the contractual documentation to see if there was any contractual notice entitlement but during the course of evidence from Mrs Brierley she gave evidence that the notice provision was 7 days either way. However, if the Claimant is found not to have been an employee, she cannot bring a claim for breach of contract in the Employment Tribunal, because that type of complaint is only available to those with employee status pursuant to Article 3 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

- 21 In terms of unpaid wages, the Claimant clarified that she is seeking to recover 5 days pay. This would appear to be a claim of an unlawful deduction from wages under section 13 of the ERA which she could pursue as a worker.
- 22 In terms of holiday pay, again that is a claim she can pursue as a worker under the Working Time Regulations 1998. The Respondent's position is that they have already paid her the holiday pay that she was due based on her working 5 days. They state that had she worked for 10 days her entitlement would have been to a further 4.53 hours which works out gross at **£234.43** but they maintain she did not work those further 5 days. They have already paid her for the 5 days she did work at £234.43 gross.
- 23 The Claimant was not in a position today to confirm that the amount she claims to be outstanding is £234.43 gross.

**Correct Respondent**

- 24 The Claimant still maintains that the correct employer is Grant Thornton LLP, she believes that Grant Thornton Agile Talent Solutions Limited (which for ease of reference I refer to hereafter **GTATSL**) are merely a shell company that do not employ anyone and that the legal entity behind GTATSL is Grant Thornton LLP. The Claimant mentioned that she has printed off some accounts from Companies House that she wanted to produce and had sent those to the Tribunal however the Tribunal staff had difficulty accessing the documents which had been emailed however, Employment Judge Heap had ordered at the previous Preliminary Hearing, that the issue of who the correct employer was would be determined at the Final Hearing. For the purposes of today's hearing the Respondent remains Grant Thornton which appears to be a trading name, however reference in this judgment to the Respondent includes GTATSL or whatever legal entity the Claimant alleges 'sits behind' GTATSL. On the information available however, it would appear likely that whatever the corporate structure, the correct respondent is GTATSL, for the reasons which are set out in this judgment in terms of the contractual relationship. Mrs Brierley accepted that that far as records on Companies House is concerned, GTATSL may not be recorded as having any employees because it does not accept that it engages people under employment contracts.
- 25 Not least given the brevity of the Claimant's witness statement, which did not deal with any of the contractual documents or indeed engage with the details of her engagement, after discussing the complaints with the parties, I adjourned the hearing to give me an opportunity to read through the bundle of documents and the statements which had been.
- 26 We were able to deal with the Claimant's evidence and cross examination of the Claimant before lunch and after lunch dealt with the evidence and cross examination of Mrs Brierley. Submissions were delivered orally late in the afternoon which meant that there was insufficient time to give proper consideration to the case and deliver judgment. I therefore informed the parties that I would reserve my decision and we would then consider how to deal with the remaining issues of whether to strike out the claims or attach deposit orders, to the extent necessary following the determination of the Claimant's employment status. Mr Mohamed, at least, was keen to potentially deal with any application thereafter on the papers.

### Findings of Fact

- 27 The Claimant gave evidence and was cross examined by Mr Mohamed under an affirmation. Mrs Brierley gave an affirmation and was cross examined by the Claimant. I asked questions of both witnesses.
- 28 I have reached my findings of fact based on the balance of probabilities. I have considered all the evidence but set out in this judgment only the evidence I consider relevant to a determination of the issues. However, the facts are largely undisputed.
- 29 It is not in dispute that the Claimant was contacted by an intermediary organisation (possibly Hays Recruitment) about working for the Respondent and then she completed an application and had an interview.
- 30 At the interview she had informed those interviewing her that she only intended to work for the Respondent. She does not allege that the Respondent had required that she commit to working exclusively for them, but she said that there was some discussion about security in terms of IT access and to mitigate that concern she had said that she would only work for the Respondent.
- 31 The Respondent says the application and interview process would have been conducted on behalf of GTATSL.
- 32 The Claimant also gave unchallenged evidence that there had also been some discussion about using an 'Umbrella' Company (i.e. that she would form a limited company and provide her services via that business) however the Respondent did not want her to do that.

### Assignment Only Worker Agreement

- 33 The relevant contractual documents include an **Assignment Only Worker Agreement** (page 134) which states that the Claimant will be engaged by GTATSL and provides that for each assignment she accepts she will be issued with an **Assignment Schedule** with specific terms relevant to that assignment.
- 34 The Assignment Only Worker Agreement provides that it starts on 6 September 2023 and will end on 5 August 2024, a period of 12 months. It further provides that the Claimant will be paid an hourly rate which will be defined within an Assignment Schedule and that GTATSL operates a monthly payroll cycle and that she would be paid on 14<sup>th</sup> of each month directly by GTATSL.
- 35 The Assignment Only Worker Agreement provides that the period to terminate the Assignment Only Worker Agreement is 30 days' notice (page 134).
- 36 Mrs Brierley gave evidence, and the Claimant did not contradict this, that the notice period of 30 days is 30 days either way, that there is an expectation that the worker will give 30 days to end this over-arching agreement and likewise that GTATSL will give the Claimant 30 days to terminate it.
- 37 Mrs Brierley confirmed that once someone accepted an assignment the expectation is that they will see the assignment through to the end.

### Handbook

- 38 The Claimant was also provided with an **Agile Talent Community Work Handbook** (page 80-131).

39 In its introduction it states as follows:

*“Our aim is to provide our client with talented resource, when they need it, to support the delivery of quality work during peak periods, as well as offering specialist skills and experience on technical projects.*

*Being part of the team means you will have the opportunity to work on a variety of assignments. You will also have the flexibility to decide when you are available and unavailable for work – there will be no requirement for you to accept assignments you are offered and, you are in full control.” Tribunal Stress*

40 The handbook goes on to provide as follows (page 85):

*“The idea of working a flexible or agile manner is that you are trusted to decide how, where and when it is best to complete your work whilst balancing your personal needs, your teams needs and the needs of your clients. This may mean you choose to work from home one day to catch up on work following a busy week of travel and client meetings. It could also mean that your clients meet in the evenings, so you start your day a bit later than usual. Or, for some people it may mean having a formal arrangement in place that allows you to meet your personal or family needs. Whatever your situation maybe, its important that you collaborate with your manager and team to ensure that everyone stays connected.”*

41 There are provisions within the handbook that deal with the requirements around drug and alcohol use and it also provides for bereavement leave and compassionate leave which is unpaid (page 97). There is also a holiday policy (page 99) this sets out the holiday booking system requires that the individual will need to access an online system called ‘Workday’ and enter the dates they would like the reporting manager to approve. It requires the individual before booking holidays to consider current and future commitments and assess if the duration of the holiday will impact on colleagues or clients. It is the responsibility of the individual to arrange handover and it goes on to say, *“For business reasons, we may have to refuse a request to take holiday at particular times or at short notice. Your reporting manager will always try and work with you to agree alternative dates.”* It provides that the individual will accrue statutory holidays whilst working on assignments.

42 There is also a Sickness Absence Policy (page 101). This also provides that the individual must inform their reporting manager or nominated team contact that they cannot come into work and that they should call to explain the situation before 10.00am. There is a requirement around providing self-certificates and the payment of statutory sick pay.

43 The handbook also provides (page 103) that in terms of medical appointments *“If you are likely to need time off to attend medical appointments during working hours, discuss this with your reporting manager first, try to arrange your medical appointments at the beginning or ending of the working day if possible. Your reporting manager will agree with you whether you are required to make this time up.”*

44 There is also provision in relation to pension during sick leave (page 104). There is a Complaints Policy where complaints can be raised informally and both formally at (page 109).

45 There is also a Performance Management Policy which applies and this provides that the Agile Workers should receive open and honest feedback on a regular basis and complete an end of assignment three-way feedback process which includes feedback forms from the Agile Worker, Reporting Manager and Client. It also provides that, *“Where performance feedback suggests an individual has significantly underperformed on assignment who has been unsuccessful on multiple assignments they will be removed from the bench in line with*

*our Underperformance and Unprofessional Conduct Policy.”*

- 46 The documentation refers to the Agile Worker being “*on the bench*” whilst they are not on assignment and whilst “*on the bench*” Mrs Brierley’s uncontested evidence is that all benefits under the handbook including salary, sick pay, holiday pay, pension etc cease. That would appear consistent with the way the handbook is drafted and the Claimant did not challenge her evidence on this point and I am persuaded that this is how the relationship operated in practice.

### **Terms and Conditions**

- 47 There is a further document headed “Terms and Conditions” (page 137-147).
- 48 Unlike the handbook which states that it does not form part of the Worker Agreement or Terms and Conditions and may be amended or withdrawn at any time, the Terms and Conditions document sets out the applicable contractual terms.
- 49 Paragraph 1.2 provides:

*“This is not an Employment Contract and does not confer any employment rights on you (other than those to which workers are legally entitled to it). In particular, it does not create any obligation on Grant Thornton Agile Talent Solutions Limited to provide work to you and you will work on a flexible as required basis.*

Paragraph 1.3:

*“It is entirely at Grant Thornton Agile Talent Solutions Limited discretion whether to offer you work and is under no obligation to give any reason in its decision to offer work or not.”*

Paragraph 1.4:

*“The Assignment Only Worker Agreement (Agreement) and this Statement of Terms of Conditions (Terms and Conditions) supersedes any previous agreements, promises, understandings or discussions (whether written or oral) relating to your worker status with Grant Thornton Agile Talent Solutions Limited.”*

- 50 Also provides at paragraph 2.1:

*“That each offer of work by Grant Thornton Agile Talent Solutions Limited which you accept shall be treated as an entirely separate and severable engagement (an assignment). The terms of the agreement shall apply to each assignment that there shall be no relationship between the parties after the end of one assignment and before the start of any subsequent assignment.”*

- 51 It also provides at 3.2:

*“You are under no obligation to expect any work offered by GTATSL any time”* and

Paragraph 3.3 :

*“If you accept an assignment GTATSL will expect you to complete the assignment and commit to being available for work for a specified number of hours noted in the Assignment Schedule”.*

The terms and conditions also deal with notice and in particular the following paragraphs 3.4:

*“If you will not be able to complete the assignment for any reason you must inform GTATSL immediately by contacting the Assignment Manager detailed on the Assignment Schedule in line with the agreed notice period for the assignment. In the event an assignment is not completed, you will be paid only for the hours of work completed.*

Paragraph 3.5:

*“If GTATSL needs to withdraw the assignment we will notify you as soon as reasonably practicable.”*

Paragraph 2.6:

*“GTATSL reserved the right to terminate an assignment at any time for operational reasons. You will be paid only for work completed during the assignment up to the time it is terminated.”*

- 52 Mrs Brierley explained that ‘operational reasons’ would cover a situation where the client had terminated the engagement and therefore there is no work for the Agile Worker to do.
- 53 The Terms and Conditions also include provision for GTATSL to terminate the agreement immediately without notice in certain circumstances which include gross misconduct.
- 54 There is also post termination restrictions (at clause 13) (page 141). In essence those provisions would restrict the ‘Agile Worker’ from certain activities for 6 months following the end of the assignment (Mrs Brierley confirmed that this is regardless of the length of the assignment whether its one week or 6 months). The activities would prevent, Mrs Brierley confirmed her understanding, the Claimant from working for any client in a similar capacity whether as an Agile Worker or working for the client directly.
- 55 It also states at paragraph 80 (page 146) that it us a condition of the offer that the Agile Worker will complete training and the cost is paid by GTATSL.

### **Claimant’s First and only assignment**

- 56 The Claimant was for her first assignment issued with an **Assignment Schedule** which sets out the specific details of that assignment. That Assignment Schedule was signed by the Claimant in November 2023 and by Mrs Brierley (page 167).

### **Assignment Schedule**

#### **Contractual Terms re status**

- 57 The Assignment Schedule provides that:

*“This schedule is not an Employment Contract and does not confer any employment rights on the worker (other than those such as outlined in the Assignment Only Worker Agreement Statement of Terms and Conditions).”*

#### **Control**

- 58 The Assignment Schedule sets out the name of the Client, the role the Claimant will be carrying out which is that of an “Independent Consultant”. It also stipulates that the hours of work are 7.5 hours per day and the working days are Monday to Friday.
- 59 It provides that the duration of the assignment is 20 November 2023 and will end on 1



December 2023.

60 The Assignment Schedule sets out her entitlement to holiday and the rate of pay.

**Notice**

61 The Assignment Schedule provides that the notice to terminate the assignment is 7 days.

62 Mrs Brierley gave evidence that if someone is on an assignment for say 10 days, after 3 days they would not be able to give 7 days' notice as required and that they would then need to have a conversation with the Assignment Manager if they wanted to be released early from that assignment, it would be a matter of negotiation but if they could not be released early then they would have to complete the assignment or otherwise they would be in breach of contract. Likewise the individual on assignment would be served notice if the Respondent wanted to terminate the agreement unless there were operational reasons.

63 The Claimant started working for the relevant client (Client) on 20 November and her undisputed evidence is that she accepts that she was free to accept or reject this assignment and decided to accept it.

64 She was in contact with Mark Daville, Associated Director at Grant Thornton UK LLP (page 170) and also there was a manager in France, Ms Leroy who managed the client relationship and who the Claimant kept in contact with.

65 The Claimant's evidence is that there was an expectation that she would keep in contact with this manager in France to keep her informed on the progress of the assignment. There were some concerns that the Claimant had raised about the Client and HMRC and she contacted Ms Leroy by email to update her.

66 The Claimant's undisputed evidence was that there was a template that she needed to fill in to show work that had been completed on an Excel spreadsheet. The Tribunal accept her unchallenged evidence on this. The spreadsheet set out the different tasks that needed to be done. She carried out this audit work with another colleague who worked via her own business.

67 The Claimant explained by way of an example, that one of the Task tabs on the Excel spreadsheet was 'assets' which involved her testing whether the Client had depreciated those assets correctly. She would take a sample of assets, run a test and she would write out her findings and conclusions and put that detail in the conclusions on the spreadsheet. The unchallenged evidence of the Claimant which on balance I accept, is that the tasks section on the spreadsheet template was very detailed, it detailed the tasks she was expected to do and that there was no flexibility on how she was to do that. The discussion about how this was to be approached had been agreed at a planning meeting with the Claimant, her colleague who was also assigned to the project, Ms Leroy and the client. The Claimant's evidence which again on balance I accept, is that the Client was very involved in how the project would be run. There was no witness evidence produced from Ms Leroy to dispute any of what the Claimant says about the setting up of the assignment with the Client.

68 The Claimant gave further undisputed evidence that she would keep Mrs Leroy updated several times a day if there was a delay or a problem. The Claimant gave evidence that she had asked Mrs Leroy halfway through the audit to join a call with the Claimant but she did not join it.

69 Mrs Brierley's evidence is that each of these assignments are different and can be managed differently, it really depends on the project and the client and whether there are problems on

the project.

- 70 Mrs Brierley's evidence which the Claimant did not dispute, is that it is always made clear to clients that the 'Agile Workers' are not as permanent members of staff but that they work on a temporary basis to address a specific project need.
- 71 Mrs Brierley gave undisputed evidence which on balance I accept, that sometimes an individual will negotiate a change to their hours on an assignment to enable them to carry on working elsewhere.
- 72 I find on balance, that while there was no written terms about reporting, the Claimant understood that she needed to keep the client relationship updated on the progress of the project, the delays and any issues and while Ms Leroy did not attend one Teams call when invited, nonetheless on balance I find that it is more likely than not that the Claimant had been told that Ms Leroy wanted to be kept updated, possibly because of the specific nature of the issues on this project.

### **Working Pattern**

- 73 In terms of the hours that she worked, the Claimant states that she usually arrived during this assignment between 8.00am and 9.00am at the Client premises and left at the end of the day normally between 5.00 and 6.00pm. There was limited flexibility because the expectation in general was that she would work her hours to suit the Client.
- 74 The Claimant's unchallenged evidence is that she did do some work from home but that had to be agreed with Mrs Leroy.
- 75 In terms of working hours and flexibility Mrs Brierley gave unchallenged evidence that it really depends on the assignment, for example, it may be 'output focussed' and the individual may agree with the client when that work will be completed but they may be flexibility in the hours and days worked however it very much depends on the arrangements between the Client Engagement Team and the Agile Worker.
- 76 I find that therefore what flexibility there is over the working pattern for the 'Agile Worker' does depend on the nature of each assignment and therefore this element of the degree of control over the individual will vary. In the assignment, it was significant.
- 77 While on an assignment, if not an output based assignment, Mrs Brierley gave evidence that in terms of the difference between an employee and an 'Agile Worker' they would carry out similar activities however, employees are provided with different policies and procedures and a different Staff Handbook, they have a different level of access to the Respondent's online systems, they have access to the general internet, and the 'Agile Worker' will not take part in team meetings, in general communications or social events.
- 78 It is clear that the working pattern for this assignment was controlled by the needs of the Client and that the Claimant was required to meet those needs was part of the expectation of the role as between the Claimant and GTATSL. The Claimant was present at the planning meeting but I accept in balance, that while she contributed to the discussion, GTATSL and the Client had the greatest influence in terms of how the project would be managed and what the requirements of the Claimant would be in terms of working pattern.

### **Training**

- 79 In terms of training, Mrs Brierly accepts that training was provided to the Agile Workers by GTATSL but that this is bespoke training and does not cover all the training that their

employees are provided with. There are certain generic training modules such as anti-bribery and money laundering and ethics but there are certain other training modules which the Agile Workers would not be trained on. The Claimant was not in a position to dispute her evidence about the training provided to those treated by the Respondent as its employees. Those employees referred to are however likely to be employees of other businesses which trade as Grant Thornton, rather than GTATSL.

### **Use of own equipment**

- 80 Originally before she was set up with a GTATSL email address, the Claimant used her own Gmail address in initial communications with the Client. Mrs Brierley's evidence is that whether someone has a Respondent email or an email set up by the client very much depends on the requirements of the client and the assignment. There may be circumstances where the Agile Worker is asked to use an email set up by the client rather than the Respondent but they would not normally use their personal email.
- 81 The Claimant did not use her email other than initially when setting up the project.

### **Future Assignments**

- 82 The Claimant also gave unchallenged evidence which on balance I accept, that she was in discussions during this assignment about other possible assignments including working at some point in Saudi Arabia. There was a discussion about possibly extending the current assignment and a discussion about another assignment in Birmingham which she had been given details of including who the client was. She accepted that she had not been given an Assignment Schedule for this Birmingham work at that point but it was anticipated that it would start mid-December 2024, it was as she described it, in the 'pipeline'. I also accept her evidence that there was also discussions about an assignment at Oxford University for 6 months starting January 2022.
- 83 Mrs Brierley had limited evidence to give in relation to the possibility of further assignments because she was not involved in those discussions and therefore was not in a position to dispute the Claimant's evidence on this point, she could only comment that as far as she was aware there were no assigned Assignment Schedules for those other projects but accepts there may have been discussion about further potential assignments.
- 84 Mrs Brierley also gave evidence that there are 1100 people in the 'Agile Talent Community' and at any one time 25-28% of them (about 250 people) are on assignments. At any one time GTATSL want to make sure they have 3 or 4 people with the right skills are potentially available if required because they have a quick turnaround, the 'Agile Workers' tend to cover urgent work for clients which is why their hourly rate is above that of a permanent employee. The Claimant was not in position to dispute the evidence of Mrs Brierley with regards to the numbers of those on assignment or the provision GTATSL make to ensure that they have adequate cover in place.
- 85 Mrs Brierley gave evidence that if someone refused an assignment, that will not harm the chances of being offered another assignment which suits their skill set. On balance I accept her evidence on this, it is consistent with having 3 or 4 people they can call on to offer an assignment to in order to try and ensure at least one person is available.

### **Pay**

- 86 It is common between the parties that the rate is pay can be a matter of negotiation with the 'Agile Worker'. The Claimant therefore I find, could have negotiated a different rate of pay.

## Submissions

87 The Respondents submissions where in brief as follows:

- (1) That the contractual document confirms that the Claimant was engaged as a worker.
- (2) The Respondent accepts that the Claimant was personally required to do the work.
- (3) While not on an assignment there was no control whatsoever, the Claimant was not paid and did not receive any benefits when not on assignment.
- (4) When on assignment control it is submitted is limited but it depends on the nature of the assignment but under the Claimant's assignment the hours she worked were guided by the Client's need for her to be on site and not by the Respondent's/GTATSL. The Respondent referred to the Claimant's evidence that there was a strategy meeting to dictate how the work should be structured and the frequency with which she updated the manager in France was determined by the Client and the problems that they were having but there is no requirement on the Claimant to update regularly otherwise.
- (5) In terms of mutuality of obligation, there was expectation to do the tasks and carry out the hours but as the Claimant accepted there had been a discussion about the assignment before she agreed to accept it and the rates can be negotiated and she retained the right to reject it and, therefore, it is submitted there is a lack of mutuality of obligation.
- (6) It is submitted that the whole process was designed to provided flexibility to workers and with 1100 contractors there is no expectation that they will accept work.
- (7) While on assignment, in terms of integration, the evidence of Mrs Brierley is that she was not subject to the same policies, that there were different levels of access to the company systems and internet and a different handbook, therefore, there was a lack of integration to suggest employment.
- (8) While Claimant reported into the manager, it is submitted there was no requirement to do so and that in terms of the assignment the Claimant undertook, she reported because there were problems and delays, however, the only time there was any expectation by the Claimant for Ms Leroy to be hands on and take part in a team meeting, Ms Leroy did not attend.

88 In terms of the Claimant's submissions, she submits that whilst she was on site she was an employee and the fact that Ms Leroy did not attend a Teams call is not evidence of a lack of control, she had been asked to keep her updated and she did. She states that there are emails on a Grant Thornton email showing the extent of her contact with her but the Respondent has refused to disclose those so far because it is saying she was employed by GTATSL and not Grant Thornton Limited. I discussed with the Claimant that she could have applied for third party disclosure from the Tribunal in advance of today's hearing. The Claimant did not seek to adjourn today's hearing but in any event, I accept on balance the Claimant's evidence that she regularly updated Ms Leroy. The Claimant accepts however that there were concerns with this Client and she does not allege that there is any document which sets out the obligations she has with respect to contact during the assignment. I accept however that the client relationship manager expected the Claimant to kept updated on the progress of a project.

89 The Claimant submitted there was no difference whatsoever between her and an employee when she was on assignment and on site. She was expected to arrive on time and finish the

assignment, she had to complete timesheets and she was paid expenses. She submitted a complaint and this was dealt with through a Complaints Policy. She received a premium hourly rate because the assignments were very challenging. She was provided with training and this was provided by the Respondent. She submits she was, at least during the assignment, an employee.

### Legal Principles

90 Section 230 of the ERA defines employee and workers as follows:

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

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

*“(3) In this Act “**worker**” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

*(a) a contract of employment, or*

*(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,*

*and any reference to a worker’s contract shall be construed accordingly.”*

91 Lady Hale in **Bates van Winkelhof v Clyde & Co Limited [2014] UKSC32 IRLR641SC**, agreed with the view expressed by Morris LJ, in **Hospital Medical Group Limited v Westwood [2012] EWCA Civ 1005** that there is “Not a single key to unlock the words of a statute in every case”.

92 In determining whether the Claimant is an employee in **Ready Mixed Concrete (Southeast) Limited v Minister of Pensions and National Insurance [1968] 1 ALL ER 433**, McKenna J explained:

*“A contract of service exists if these three conditions are fulfilled:*

*(i) The servant agrees that, in consideration of a wage of or other remuneration, he will provide his own work and skill in the performance of some service for his master.*

*(ii) He agrees, expressly impliedly, that in performance of that service he will be subject to the other’s control in the sufficient degree to make that other master.*

*(iii) The other provisions of the contract are consistent with its being a contract of service.....”*

93 It has been established by **Carmichael v National Power Plc [1999] ICR 1126** in The House of Lords, “That if the entire relationship of the parties is contained in documents then the construction of those documents is a matter of law for the Courts. But in so far as it is not, then it is the matter of fact for the determination by the Tribunal as to precisely what the relationship is. Thus, the way in which the parties conduct themselves where the documentary evidence may not be full or clear is evidence upon which a Tribunal may

*properly found its conclusions, always provided it has approached the matter correctly in law....”*

- 94 Mr Justice Langstaff in **Cotswold Developments Construction Limited v Williams [2006] IRLR 181 EAT**, stated *“It will often be relevant in determining whether a person is a worker or in business dealing with customer or client to consider the integration test. According to this test, it is possible (in most cases) to determine whether a person is providing services to a customer or client by focussing on whether that individual actively markets his or her services and independent person to the world in general (and thus supply it to customers) or whether he or she is recruited to work for the principle as an integral part of this organisation.”*
- 95 In **Agada v LPC Law Limited ET case number 3201983/19** LPCL Limited provided advocacy services to solicitor firms, companies and individuals by engaging advocates to attend in court hearings on behalf of its clients. ‘A’ worked for LPCL Limited as an advocate. Once she indicated her availability she was allocated cases which she could accept or decline. She was required to contact LPCL Limited clients before and after any court hearings, introduce herself as the advocate from LPCL Limited, she was required to submit a daily report of any court hearings she attended to her advocacy manager and the Tribunal found that she was a worker. It found that her role in the business was not ancillary but essential because they could not function without advocates like her and she was integrated into the business in a significant way. With the level of supervision indicated that the Company had a high degree of control over her. While there were some factors that might indicate that the Company was a client of hers or a customer (she was free to offer services to others there was no mutuality of obligation between jobs) those factors while relevant were not determinative and the expectation was that she would be offered and accept work on a regular basis.
- 96 A casual worker who does not enjoy the mutuality of obligation necessary to establish a global contract of employment based on long standing relationship maybe able to establish sufficient mutuality of obligation in relation to each specific engagement. The worker may, therefore, be regarded as an employee in respect of each engagement even though the employment relation when each engagement is completed : **McMeechan v The Secretary of State for Employment [1997] ICR 549 CA**.
- 97 In **Cornwall County Council v Prater [2006] ICR 731 CA** the Council operated a home tuition scheme under which tuition was provided to school children for as long as necessary. Although there was no obligation on the Council to provide work or a tutor to accept it, once a pupil in role there was a mutual expectation that the tutor would complete the assignment and the Council would pay the teacher for that work. ‘P’ began working as tutor in 1998 was awarded a post as an employee in 1998. She was paid in all but 14 months of that period. The Court of Appeal upheld that the Employment Tribunals decision that her employment with the Council stretched back to 1988. ‘P’ successfully argued that the individual engagements once entered into constituted contracts of employment so there was no need for her to establish an overarching mutuality of her obligations throughout the 10 year period.
- 98 In **Drake v Ipsos Mori UK Limited [2012] IRLR 973 EAT**, His Honour Judge David Richardson overturned the Employment Judge’s decision that the Claimant who worked on an assignment basis was not an employee during the periods of work. The handbook issued by the Company stated they acceptance of any individual assignment would give rise to a verbal contract that the job would be completed to a deadline. The Employment Judge found as a fact that no penalties or disciplinary sanctions were ever imposed when a worker did not complete an assignment. The Judge had treated the fact the individual contract arising under these arrangements was terminable at will as a determining factor in his conclusion that the contract was not one of employment, but was an error of law.

## **Conclusions**

- 99 Applying the Ready Mix Concrete test, there is no dispute that the Claimant in this case had agreed that in consideration for an agreed hourly rate of pay and other benefits, she would provide her own personal work and skill in the performance of a service for the Respondent/GTATSL.
- 100 The Respondent does not dispute this and does not dispute that she was worker during this assignment.
- 101 There was a contract in place and I have been taken to the contractual documentation.
- 102 In terms of control, this is not set out in the contractual documentation and in practice it varies depending on the particular type of project, the needs of the client and no doubt how problematic that assignment may be. If it is 'output' focussed, the control is more limited, but in terms of the relevant assignment the Claimant was working on, there was significant control. She had to work the hours and days to suit the Client. I am not persuaded by the Respondent's submission which appears to be that if the Client has the control, this is not control by the Respondent/GTATSL. The arrangement with the Respondent/GTATSL is about the Claimant meeting the needs of its client and in turn therefore its own needs.
- 103 There are safeguards in place for the Respondent/GTATSL should the Claimant's performance on assignments not be satisfactory. Under the Worker Handbook the Claimant must ask for feedback 'throughout the assignments' in order to deliver her best work and that feedback will be reviewed and if the feedback suggests significant underperformance she will not be offered any more assignments (she will be removed from the 'bench') (page 111).
- 104 In terms of the assignment in question the Tribunal accept on balance that the Claimant was asked and indeed reported regularly into a manager employed by the Respondent who was responsible for the relationship with the Client. The Claimant had an Excel spreadsheet where the specific tasks she had to undertake were set out for her and whilst she had some discussion with the Client and the manager around planning the project, the Tribunal accept that those discussions were very Client and Respondent led.
- 105 The Claimant's days of work were set out in the contractual documentation, The Assignment Schedule prescribed the working days as Monday to Friday. Again the Tribunal accepts this was very client led in terms of their needs. It was a short assignment from 20 November to 1 December. In terms of the hours worked the Tribunal also accept on balance that these very much had to align with the Clients working hours and, therefore, there was limited flexibility in terms of her ability to change the hours.
- 106 The Tribunal accept that there was a significant amount of control in terms of the structuring of the Claimant's working hours and days, the tasks that had to be performed and the reporting back to the manager of the tasks that were being completed and any problems encountered on that project. The Tribunal, therefore, find that the Claimant was in a position of subordination and was subject to the Respondent's control to quite a significant degree while on this particular project.
- 107 In terms of mutuality of obligation, there was I conclude, no obligation on the Claimant to accept this assignment and nor does she allege she was put under any pressure to accept the Birmingham or Oxford University assignment that she was discussing.
- 108 There was no expectation or obligation on the Claimant to accept any assignment and the Claimant does not argue otherwise.

- 109 The Claimant was keen to work on the projects and volunteered that she would not work for anyone else, however, there was the Tribunal conclude no requirement placed on her to work exclusively for the Respondent/ GTATSL.
- 110 Outside of the assignments all benefits and payments to the Claimant ceased and that this was the contractual arrangement entered into is made clear from the documentation. There was, however, some ongoing control even outside of the individual assignment in the sense that where the Claimant had carried out an assignment she was then subject to a 6 month restrictive covenant in relation to the services provided to that particular client but that appears to be the extent of it, that there was certainly no obligation on the Respondent to offer work or any obligation on the Claimant to accept it so while there was some element of control there was no mutuality of obligation outside of the assignments.
- 111 When not on assignment there was no obligation on the Claimant to accept work/assignment. There was obligation to receive any remuneration or benefits. There was (apart from the restrictive covenant) no ongoing control over her activities. In all other respects the arrangement when not on assignment was not consistent with there being a contract of service. This is not a case where there had over time developed a regular pattern of the Claimant's working on assignments, and I therefore have little difficulty in concluding that in the Claimant's case, there was no overarching employment relationship in place. The Claimant's case in any event, is that her employment ended on 1 December 2023 when the assignment with the Client ended (claim form- page 5).
- 112 The assignment was however terminated without notice by the Respondent, in fact the undisputed evidence of the Claimant is that she went to log in one day and she simply could not log in and was then told that her assignment was terminated but she has still not been told the reason.
- 113 The Claimant was not served with the required 7 days-notice and the Respondent in its response to the claim does not expressly refer to the right to terminate for 'operational reasons' without notice applying but says that the assignment was not being performed to the satisfaction of the Client.
- 114 In terms of mutuality of obligation, Mrs Brierley herself confirmed that there was an expectation that that assignment would be completed once accepted. The Claimant was contractually required to give notice and if there was not sufficient time remaining to give the 7 days contractual notice, and if the Respondent did not agree to release her, then she had to complete the assignment or otherwise she was potentially in breach of contract.
- 115 The Respondent was under a contractual requirement to give notice, unless there were operational reasons which in effect frustrated the ability to carry out the assignment, therefore this was not a situation where the contractual relationship allowed the Respondent to simply send the Claimant home halfway through a shift and only pay her for the work done on that day. The work could not, according to the contract, simply be withdrawn during the Claimant's working day or even during the course of the assignment. There was an obligation on the Respondent to provide the Claimant with work under the specific Assignment Schedule (subject to notice to termination that schedule).
- 116 The Claimant bore no financial risk because she was only paid an hourly rate, her pay was not dependent on a successful outcome to the project or how quickly she delivered it.
- 117 She was paid through the payroll regularly an agreed hourly rate.
- 118 This is not a situation, however, where the Claimant had been working on the assignment for a considerable period or had carried out a significant number of assignments. Although



she hoped that this would develop into regular assignments and she was in discussions about further assignments (including a significant 6 month assignment in Oxford), none of those came to fruition.

- 119 Whilst the Claimant was not treated the same as employees of the Respondent, in terms of being integrated in the sense that she was not invited to team meetings or social events and did not have the same level of training, the Respondent's case is that she was working for GTATSL who have no employees, and she was it seems an integral part of their "Agile Talent Community".
- 120 The contractual documentation throughout refers to there being no employment contract as between the Respondent and the Claimant during the assignments or outside the assignments and that is what the Claimant agreed to.
- 121 There are many indicators in this particular case given the degree of control and the benefits that the Claimant had and the requirement to give notice to terminate and the expectation that the assignment will be completed once started, to indicate a contract of employment while working on the assignment. However, set against that is the clear contractual documentation which confirms what the parties agreed to in terms of status. The intentions of the parties when they entered into the contractual documentation is clear, namely that there will be no contract of employment between them and there is no obligation to accept any assignment offered. The Claimant does not dispute that she had entered into this arrangement understanding anything different.
- 122 I also take into account that in the Claimant's case her work for the Respondent/GTATSL, was of an incredibly short duration. The contractual agreement was only to last a couple of work, from 20 November to 1 December, this was a very short period of work, she was not obliged to accept any work after this and she was not obliged to work exclusively for the Respondent/GTATSL.
- 123 I also take into account that in terms of integration, while there is a degree of integration in terms of training for example, the whole premise of this business is that they do not have employees but they are agile so that they can respond to the needs of clients by assigning to them skilled personnel to deal with certain project work and the clients know the individuals are not employees but work on projects on a temporary basis, they are not held out to be employees of the Respondent.
- 124 The Claimant does not assert that the Respondent required her to only work for them, there was no exclusivity, she could have worked for other organisations whilst also working for them.
- 125 In **Massey v Crown Life Insurance Co 1978 ICR 590, CA**, Lord Denning MR stated that '*if the true relationship of the parties is that of master and servant under a contract of service, the parties cannot alter the truth of that relationship by putting a different label upon it*'. However, his Lordship also explained that 'when it is a situation which is in doubt or which is ambiguous, so that it can be brought under one relationship or the other, it is open to the parties by agreement to stipulate what the legal situation between them shall be'.
- 126 Lord Justice Elias in **Stringfellow Restaurants Ltd v Quashie 2013 IRLR 99, CA**, said: '*It is trite law that the parties cannot by agreement fix the status of their relationship: that is an objective matter to be determined by an assessment of all the relevant facts. But it is legitimate for a court to have regard to the way in which the parties have chosen to categorise the relationship, and in a case where the position is uncertain, it can be decisive.*'
- 127 I do not conclude that the statement about employment status was not a true statement of

the parties' intentions when they entered into the arrangement and objectively it is apparent, given the needs of the business for this type of agile working arrangement, that the object of the arrangement was not to defeat the operation of legislation conferring employee rights.

- 128 Taking into account all these factors, including the limited nature of the project work she did performed and the clarify in the contractual documentation, I conclude on balance that while working on the assignment, the Claimant was a worker as defined by section 230 but not an employee.
- 129 The Tribunal therefore has no jurisdiction to deal with the Claimant's complaint of automatic unfair dismissal under section 103A of the Employment Rights Act 1996 and her claim, therefore, must be struck out.
- 130 The Claimant cannot pursue a complaint for a redundancy payment pursuant to section 135 ERA because she was not an employee (and in any event did not have two years' service), therefore that claim must be struck out.
- 131 The Claimant has no right to pursue a claim for breach of contract (for notice pay or unpaid pension) in the Employment Tribunal. That is not to say however that she has no legal recourse, she may have right to bring claim in the civil courts for breach of contract.
- 132 There is no free-standing claim against being 'bullied' but to the extent that this relates to the detriments she has identified for whistleblowing this is covered by the ability to pursue a claim under section 47B ERA.
- 133 As a worker the Claimant does have the right to pursue the following claims:
- 139.1 A claim for unlawful deduction of wages pursuant to section 13 ERA for the 5 days pay that she claims she is owed.
  - 139.2 A claim for unpaid holiday pay under the Working Time Regulations.
  - 139.3 A claim that she was subjected to a detriment for whistleblowing under section 47B of the ERA. The detriments she alleges are:
    - (1) The early cancellation of the assignment that she was working on.
    - (2) Not being offered the further assignment with the client in Birmingham.
    - (3) Not being offered the 6 month placement with Oxford University.
- 134 Separate case management orders will be made regarding future case management.

Approved by:

**Employment Judge Broughton**

**Date: 27 March 2025**

**JUDGMENT SENT TO THE PARTIES ON:**

.....31 March 2025.....

.....

**Public access to employment tribunal decisions**

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

**"Recordings and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>