EMPLOYMENT TRIBUNALS

Claimant: Ms Gabriella Tiltman

Respondent: Moon Predictions Ltd

Heard at: Nottingham (by CVP) **On:** 11 March 2025

Before: Employment Judge Chapman

REPRESENTATION:

Claimant: In person
Respondent: Mr J Boyd (Counsel)

AT AN OPEN PRELIMINARY HEARING BY CVP

RESERVED JUDGMENT

1. The claimant was not an employee or worker of the respondent at the relevant time. The claim is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

REASONS

Introductions

2. This was a preliminary hearing listed to determine two broad issues:
    a. The Claimant's employment status, namely whether she was:

i. An 'employee' within the meaning of Section 230(1) Employment Rights Act 1996 ("ERA 1996);
ii. A 'worker' within the meaning of Section 230(3) ERA 1996; or
iii. An independent contractor.

b. Depending upon the outcome of the above determination:
i. Whether a whistleblowing claim had been pleaded, and if so whether it required further and better particulars;
ii. If no such claim had been pleaded, whether the claim should be amended to allow the Claimant to add a claim for whistleblowing detriment and/or dismissal.

3. The parties agreed at the outset of the hearing that the above were the issues I had to determine.

4. Ahead of the hearing, I had the benefit of a bundle running to 173 pages. Bundle references in these Reasons shall take the following format: *(electronic page number) [paragraph number as applicable]*.

5. At the commencement of the hearing, the Claimant informed me that two of her documents were missing from the bundle. Those were pages 20 and 22 of a bundle of documents that the Claimant had herself produced. These were identified and sent to Mr Boyd to review. Whilst they were not formally paginated and added to the bundle, they were considered.

6. Ahead of the hearing, I also received:
a. The Witness Statement of the Claimant dated 25th February 2025;
b. The undated Witness Statement of the Claimant's sister Janina Pawlowska; and
c. The Witness Statement of Sue Moon, the Owner and Managing Director for the Respondent, dated 25th February 2025.

7. I heard oral evidence from the Claimant and from Ms Moon. During the course of the hearing, I discussed with the Claimant whether she was intending to call her sister to give oral evidence. The parties were content to proceed without her being called on the basis that:
a. I acknowledged that the contents of her statement were disputed by the Respondent; and
b. I did not hold it against the Claimant's case that the statement would not be sworn evidence nor had it been challenged in cross examination.

8. I heard closing submissions from the Claimant and from Mr Boyd on the question of employment status. By this time, it became apparent that I would not have time to properly consider the evidence I had heard and give judgment before the end of the court day. Depending upon the outcome of that judgment, I would then have to hear submissions and give judgment on the procedural whistleblowing

issue. I decided to hear submissions on the procedural whistleblowing issue and reserve judgment on both matters.

9. I have made findings of fact which I shall address throughout the course of these Reasons.

Background

10. The Claimant confirmed in her oral evidence that her legal name is in fact Gabriella Harrison. She has had three names:
    a. Ruza Pulowska, her original name, which she relinquished having been bankrupted in the 1990s;
    b. Gabriella Harrison, the name she changed to;
    c. Gabriella Tiltman, the name she used when she married.

11. When she separated from her husband, she reverted to Gabriella Harrison, but brought her claim in the name of Gabriella Tiltman.

12. The Respondent is a company providing psychic, tarot, medium and clairvoyant telephone and text readings through an online platform. It employs around 7 members of staff. There are a further 50 self-employed individuals who are Readers for the Respondent's service.

13. The Claimant was a Receptionist for the Respondent. This primarily involved managing callers and allocating them to Readers, but also included listening in to calls to ensure quality control and safeguarding measures were being applied, and investigating concerns raised in respect of specific callers. This was shift-based work, though the Claimant would also engage in commission-based work called 'pins' which I understand to be answering the company telephone outside of shifts.

14. There was a dispute as to whether the Claimant commenced in this role in 2016 as per the Claimant's case, or in 2018 as per the Respondent's case. I am not clear on the basis for this dispute, particularly given the evidence referred to below from 2016 that the Respondent relies upon in respect of the present hearing, but this is not something that was argued before me or something that I needed to determine for the purposes of the hearing.

15. The Claimant's engagement with the Respondent was terminated in December 2023. The reasons are not an issue for the Preliminary Hearing.

Employee - Law

16. Section 230 ERA 1996 provides 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.

17. The modern definition of the requirements of a contract of employment is derived from the case of **Ready Mixed Concrete (SE) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433** as developed and restated in a number of subsequent cases:
    a. There must be:
        i. An obligation on the employee to provide their own work or skills in the performance of some service for the employer, in consideration (i.e. in return) for a wage or some other remuneration;
        ii. Personal service (i.e. the work must be done by the individual);
        iii. Mutuality of obligation (i.e. the employer must provide work and the employee must do the work);
        iv. An appropriate degree of control by the employer over the employee.
    b. In respect of 'control', this in practice means the employer can direct what the employee does or does not do. It includes the power of deciding:
        i. the things to be done;
        ii. the way in which they shall be done;
        iii. the means to be employed in doing them;
        iv. the time when and the place where those things shall be done.
    c. I must look to the true intention of the parties in reaching their contract, and not just the label the parties attach to their roles (**Autoclenz Ltd v Belcher [2011] IRLR 820**).
    d. I should consider all relevant factors, including other provisions of the contract, to see whether they are consistent with there being a contract of service.
    e. I must not approach the matter as a tick box exercise. I need to stand back and make an informed, considered and qualitative assessment of the accumulated detail.

Employee - Conclusions

18. The Claimant was clearly providing a service as a Receptionist for the Respondent and was being paid for such services. This does not appear to be disputed.

Intention of the Parties

19. I find that the parties intended at the outset and throughout the relationship that the Claimant would be self-employed.

20. I am assisted in this conclusion by a number of emails which contain references by both parties to the Claimant being self-employed:
    a. Chain 1: At *(58-59)* there is a chain of emails all seemingly sent on 1st February 2016. The subject of the chain is 'New Starter Forms':
        i. At 8:18, Wendy Flynn, a manager for the Respondent, asked the Claimant to fill in and return an attachment (or attachments) as *'Payroll need these to be able to process [her] wages'*.
        ii. Following a couple of emails about the Claimant's change of name and national insurance number, at "11:16am -0800" (which I read as meaning 19:16), the Claimant replied as follows: *"Ok, I will try and the get the change of name document scanned so that I can send it to you by email, there won't be any issues though I am 2000% sure of that, I can't stay as a self employed person can I? its not a problem just asking:) I have been self employed for over 30 years long time!"* (my emphasis added).
        iii. Ms Flynn forwarded this email to Ms Moon at an unknown time asking about her thoughts on this, anticipating the Claimant would invoice monthly, asserting that she did not think the Claimant would let them down on shifts, and noting that Ms Moon would 'save on holiday pay etc'.
    b. Chain 2: At (*61)*, there is an email from the Claimant to Ms Flynn dated 22nd February 2016 at 9:22 in which she asks *"Just a quicky as I am self employed with you am I down to get paid at the end of this month?"*.
    c. Chain 3: At *(62-63)*, there is a chain of emails sent between 2nd – 4th June 2014. It is largely about the allocation of Receptionist hours, but it ends with an email from the Claimant to Ms Flynn in which she complains about a text she has received from an individual named Donna *"which upset me a bit as she seems to know I am self employed and I will be staying that way etc"* (emphasis added). It then goes on to explain further her upset about her confidential information being disclosed to someone she does not know.
    d. Chain 4: At *(65-67)*, there is a chain of emails sent between 12th – 13th July 2017 engaging a number of people including Ms Moon and Ms Flynn, but excluding the Claimant. It is about the failure of the Claimant and an individual called Wendy to log on. It ends with an email from Ms Moon at 9:15 on 13th July in which Ms Moon explains Wendy will not be paid for her shift, but that the Claimant *"is a difficult one as she is self employed, however we don't have any obligation to give her any shifts either"*.
    e. Chain 5: At *(69)*, there is a chain of emails dated 24th May 2020 between Ms Flynn and the Claimant about the allocation of some shifts in August and September. The Claimant asked Ms Flynn to confirm she had not been allocated any shifts, and Ms Flynn confirmed that was correct

because there were enough offers from permanent staff members and *"As you know, it will go to them first and if cover can't be found it will go to self employed (which is only you now that Donna no longer works for us)"*. The Claimant's reply does not challenge the assertion that she is self-employed. It appears to confirm it with 'Ok', and goes on to suggest that such a policy had not been applied before.

21. The Claimant asserted Chains 1-3 had been doctored by the Respondent:
    a. In respect of Chain 1, she has provided what she says is the correct version of the email at 19:16 which appears at *(60)*:
        i. She disputes the underlined sentence above was contained in the email, and asserts that this has been inserted by the Respondent in order to make it appear the Claimant wanted to be self-employed.
        ii. She asserted that the emails have been re-ordered so that they follow a different sequence. She says that the email from Ms Flynn to Ms Moon should in fact appear as the very first email in the chain which starts on *(59)*.
    b. In respect of Chain 2, she asserts that she would not speak in that way.
    c. In respect of Chain 3, she has provided what she says is the correct version of the email at 14:10 on 4th June 2016 which appears at *(62)*. She again disputes that the underlined sentence above was contained in the email and alleges the same motive on the part of the Respondent.

22. I am satisfied the emails as presented by the Respondent properly reflect the emails as they were sent:
    a. In respect of Chain 1:
        i. The order in which the Claimant says the emails should properly appear does not make logical sense. Ms Flynn's email starts with the sentence: *"Do you have any thoughts about this email below?"* when no email would appear below if the chain started with that email. The next email would not request forms be filled in for payroll if the chain was starting on the basis that the Claimant was going to invoice the Respondent.
        ii. The sentence that has been removed is written in a way that is in keeping with the colloquial way other emails from the Claimant have been written, such as the extent of Chain 3 that she does accept and the email she has included at *(71)*.
    b. In respect of Chain 3, the deleted passage provides the fundamental context to the remainder of the email. Without that passage, the reader would be wondering what confidential information had been disclosed.
    c. In respect of Chain 4, I note that the Claimant was clear that she was not suggesting the emails were fabricated. This is to her credit as she was not party to the emails, but it does not then explain why it would refer to the Claimant being self-employed if this was not the case. It makes it more likely that the other emails did refer to the Claimant being self-employed.

d. The Claimant said that she understood it was very easy to doctor emails. In her witness statement at [16], she asserted this could be done by copying emails across into Word and amending them. In her oral evidence, she asserted this could be done utilising ordinary email applications and/or programmes (such as Outlook or Hotmail), but could not explain how this could be done. In light of the further conclusions I have outlined in this paragraph, I find that her awareness is because either:
    i. she has doctored the emails she has presented in order to remove references to being self-employed, and she was not forthcoming about her knowledge about how to do this (such knowledge being displayed in her witness statement); or
    ii. someone has done this on her behalf.
e. The Respondent's email evidence all forms part of their respective email chains. The Claimant's versions of the emails she relies upon do not form part of their respective chains, making it more likely there has been at least some editing of the chains such as deleting the other emails that form the chains.

23. The Claimant asserted in her Witness Statement at paragraph [2] that she had initially been employed on a three-month probationary period at the beginning of her engagement. Under cross-examination, for the first time she asserted that there had been a period of probationary self-employment at the beginning of her engagement with the Respondent. That was inconsistent with her case to date, which has been to deny any self-employment. I find that it was an effort to explain away some of the difficult questions she was being asked about her case.

24. These findings in particular have led me to prefer the credibility of Ms Moon, who I found to be a forthright witness giving consistent evidence, when there is conflict between her evidence and that of the Claimant. Whilst I acknowledge that an individual who is misleading or dishonest about one matter is not then necessarily lying about other matters, I cannot be satisfied that the Claimant is accurately recounting events in circumstances where her evidence has been manipulated.

25. The parties' intention is not the end of the matter. The parties may well have intended that the Claimant be self-employed and attached that label, but I must go on to consider what actually happened in practice and whether there was in fact a contract of employment. The intention does, however, provide important context.

Mutuality of Obligation

26. I am not satisfied there was mutuality of obligation. The Respondent was not obliged to provide work and the Claimant was not obliged to accept it.

27. I accept the Claimant's evidence that she wanted to work as many hours as she could because she was struggling financially. Ms Moon also accepted this, and that the Respondent would provide as many shifts as they could. That does not mean the Respondent was obliged to provide such work or that the Claimant was obliged to do it. It was a relationship of mutual convenience.

28. I am supported in this conclusion by the email chain at *(69)* referred to above in which the Claimant was not offered shifts because those available were taken up by employed staff who were prioritised over the self-employed.

29. I acknowledge that the Claimant was included in rotas, but I do not find that this proves an obligation to provide work or an obligation for the Claimant to do the work. I accept Ms Moon's evidence that the Claimant was included in rotas for convenience.

30. Because there was no mutuality of obligation, and there must be such mutuality of obligation for there to be a contract of employment, the Claimant cannot have been an employee.

Degree of control

31. Insofar as I need to consider this, I am satisfied there was an appropriate degree of control by the Respondent over the Claimant.

32. Whilst the Claimant was not issued with a staff handbook containing company procedures, Ms Moon acknowledged there was an expectation to follow 'guidelines' and the Claimant was trained to do the work in line with such guidelines. There does not appear to be any real difference between the way the Claimant was expected to do her work and the way other Receptionists were required to do theirs.

33. Similarly, there does not appear to be any real difference between control exerted over other Receptionists and that exerted over the Claimant in respect of how their work should be undertaken. Such control included monitoring her attendance and engagement (as acknowledged by Ms Moon in her oral evidence), monitoring her work against benchmarks (such as the example at *(71)* in which the Claimant is being reminded that readings are supposed to be 60 minutes), and the need to ask to log off for toilet breaks (as evidenced by the text message at *(73)*).

34. I am not critical of the level of monitoring and control, and I do not accept it was untoward. On the contrary, I would expect it given the remote nature of the role, and the nature of the business in providing a service. As an example, one particular issue explored in evidence was the need for the Claimant to liaise with

staff and managers about when she would take breaks. That is not inappropriate as the team would have to ensure that the phone lines were covered to maintain the desired level of service.

Personal Service

35. I find there was no requirement for personal service.

36. The Claimant asserted that she was unable to substitute her services with that of another individual.

37. Ms Moon disputed this. In her witness statement at [16], and in her oral evidence, she acknowledged that any individual the Claimant put forward would need to be familiar with the system the Respondent used and would need to follow the guidelines, but asserted there would otherwise be no problem. In practice, Ms Moon explained that the person the Claimant chose to undertake the work would always be someone who had worked for the Respondent, but it would have been open to her to train somebody herself to undertake the work even if she did not in fact do so.

38. For the reasons I have already outlined, I prefer Ms Moon's evidence to the Claimant's evidence.

39. I need to consider whether the right to substitute that Ms Moon described is inconsistent with a requirement for personal service. It is not an unfettered right to substitute given the need to ensure that the person substituted was familiar with the system and could follow the Respondent's guidelines.

40. In **Pimlico Plumbers Ltd and anor v Smith 2017 ICR 657, CA**, Sir Terence Etherington MR hearing the matter in the Court of Appeal provided a summary of 5 points drawn from case law relating to substitution clauses. I do not need to rehearse all 5 points. His 4th point was: *"a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance"*. Whilst each case will turn on its own facts, and Sir Etherington's points are not to be treated as creating definitive categories of case which do or do not displace the obligation of personal service, I note the present case does fall squarely within this 4th point.

41. On the later appeal to the Supreme Court in the Pimlico Plumbers Ltd case, the Court distinguished between two situations:
    a. One where the substitute had to be another operative of the employer who was already bound to that employer by obligations which were identical to the claimant, in which case there was a limited right of substitution; and
    b. The converse where the employer was uninterested in the identity of the substitute, provided only that the work gets done.

42. I am satisfied by Ms Moon's evidence that this case falls into the 2nd type of case and the Claimant's right to substitute was inconsistent with a requirement to provide personal service. It did not matter who that person was provided the work was done by an individual who knew how to do the job. The substitute would not have to come from the ranks of the Respondents' operatives and could have been trained by the Claimant.

Other Relevant Considerations

43. I have also taken into account the following:
    a. The Claimant would invoice the Respondent for her pay. She did not receive payslips. She did not form part of the payroll. She was responsible for her own tax affairs.
    b. The Claimant utilised her own IT equipment. This was not provided to her by the Respondent.
    c. The Claimant was not subject to any formal disciplinary procedure or required to undertake any formal appraisals, and did not receive the Company's handbook. The Claimant in her evidence asserted she was as she would be 'told off' if she did not do something and that she was told how well she was doing. I do not find the raising of issues with the Claimant's work or providing feedback to be evidence to the contrary. An individual who engages the services of a self-employed person cannot be said to subject them to disciplinary processes if they complain about the service being provided, or to be undertaking appraisals if they provide positive feedback.
    d. The Claimant was not part of the Respondent's pension scheme.
    e. Other employees were required to attend the office, whereas the Claimant was not required to do so.
    f. The Claimant appeared to accept she did not have any entitlement to holiday pay. She repeatedly asserted that she did not take holidays as she could not afford to take time away from work.

Worker - Law

44. Section 230 ERA 1996 provides:
    (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.

Worker - Conclusions

45. In order to be a worker under s. 230 ERA 1996, the Claimant would have to be undertaking to perform their work or services personally. As above, I have already found there was no such personal service. The Claimant could not, therefore, have been a worker under Section 230 ERA 1996.

Whistleblowing

46. There is an extended definition of 'worker' under Section 43K ERA 1996 for the purposes of whistleblowing claims. I therefore need to go on to consider whether a whistleblowing claim has been pleaded and, if not, whether the Claimant should be permitted to amend her case to include one before I consider whether the Claimant might fall under this definition.

47. In the Claimant's ET1 Form, she has not ticked the box in Section 8.1 to confirm she is making a whistleblowing claim. She has ticked boxes above and below the 'whistleblowing' box to confirm she was making a claim for unfair dismissal, notice pay and holiday pay. She has, however, ticked the box at 10.1 asserting that her claim includes one of whistleblowing and that she wants a copy of the form to be forwarded on her behalf to the relevant regulator (who she has named as Action Fraud and has included a reference number).

48. The matter came before EJ Ahmed on 4th October 2024 whose order starts at *(51)*. They recorded at Paragraph 11 that the Claimant indicated she always intended to bring a whistleblowing claim. At Paragraph 13, the Claimant was notified of the need to bring any amendment application as soon as possible. At Paragraph 14, she was notified that any application relating to the whistleblowing should set out:
    a. The date of the protected disclosure(s);
    b. The content of the information disclosed;
    c. To whom the disclosure was made;
    d. Why it is said to be in the public interest;
    e. Why it is believed the detriment or dismissal was somehow connected to it.

Has the claim been pleaded?

49. In Sim v Manchester Action on Street Health (MASH) EAT 0085/01, the Employment Appeal Tribunal explained: "The subject matter of protected disclosures and to whom they must be made and by whom and in what state of mind are all matters carefully regulated… and need to have their constituent parts set out and specified in a claim even if only in brief or summary form."

50. I queried with the Claimant where she had pleaded her whistleblowing claim within her ET1. Whilst I was referred to various paragraphs in which the Claimant raised her complaints about the company, the constituent parts of her claim are not set out or specified. There is a general assertion on *(17)* at paragraph [14]

that 'the Claimant has been informed by the organisation 'Protect' and other solicitors that the reader Louise is guilty of fraud by abuse of position / deception and… Sue Moon is also guilty of deception and fraud for personal financial gain which she has been told is a criminal offence'. This appears to be a conclusion drawn from an assertion on (11) at paragraph 3 (though this is not clear and I am drawing inferences) that her concerns about a particular customer admitting he had hacked an ex-partner's social media account and was stalking them were ignored because he was spending a lot of money with the company. There is no explanation as to how or why that amounts to fraud, if true. There is no explanation as to how that issue falls into any of the other categories of protected disclosure under s. 43B Employment Rights Act 1996. The fact that I am having to draw inferences in itself indicates the claim has not been pleaded. As a further example, there is no explanation as to why the Claimant's disclosure is in the public interest and the reader is left effectively drawing their own conclusions.

51. I acknowledge the Claimant is a litigant-in-person, and some account should be taken of that and her inexperience with a difficult process. I am not however satisfied a whistleblowing claim has been pleaded.

Amendment Application

52. The Claimant had not made an amendment application as explained to her by EJ Ahmed. The Claimant submitted that she should be permitted to amend her claim as she had worked for the Respondent for 8 years, was told that she would never be out of a job, and that she was dismissed for raising a very important issue.

53. Mr Boyd submitted that the Claimant had not complied with what EJ Ahmed had said she should comply with by making an application. Insofar as I need to consider the underlying merits of the claim, he submitted the Claimant would have a tall order attributing a dismissal in December to disclosure raised in July/August time. The application could and should have been brought earlier, and the balance of convenience falls against the Claimant noting the period of time that had since elapsed and the effect upon the witnesses' memories.

54. In considering whether to permit the amendment, I need to consider the following:
    a. The Overriding Objective and the need to deal with cases fairly and justly, which includes so far as practicable (Rule 3 of the Employment Tribunal Procedure Rules 2024):
        i. Ensuring the parties are on an equal footing;
        ii. Dealing with cases which are proportionate to the complexity and importance of the issues;
        iii. Avoiding unnecessary formality and seeking flexibility in the proceedings;
        iv. Avoiding delay, so far as compatible with the proper consideration of the issues; and
        v. Saving expense.

b. The real and practical consequences of allowing the amendment or otherwise, such as the severity of the consequences of refusal, and the practical problems in responding such as witnesses' memories and the availability of relevant records (Vaughan v Modality Partnership [2021] IRLR 97).
c. I must balance the hardship and injustice of allowing the amendment against the injustice and hardship of refusing it (Cocking v Sandhurst [1974] ICR 650).
d. The factors from Selkent Bus Co v Moore [1996] IRLR 661:
    i. Relevance;
    ii. The reason;
    iii. Justice;
    iv. Fairness.
e. Whether this is a minor or substantial amendment;
f. I should distinguish between claims that arise out of the same facts, and those which are entirely unrelated to the original claim (President's Guidance Note No 1).

55. This is a substantial amendment. Whilst it arises out of the same facts as the primary claim, it introduces a new cause of action.

56. If I do not allow the amendment, the Claimant's claim will end at this hearing. That is a severe consequence. Relevant records are still likely to be available, and witness memories on this issue will be no worse than they would have been in respect of the primary issue.

57. I cannot, however, ignore the fact that EJ Ahmed made clear that an application for an amendment should be made and what that application should contain. That application was not made. I was told the reason was because the Claimant had been advised to focus upon the unfair dismissal aspect of the claim. I do not consider that this is a good reason for failing to make the application. Treating the whistleblowing claim as an afterthought leads me to question whether it is seriously pursued, or if it is an effort to keep some form of claim before the Employment Tribunal. I have to remain mindful of the expense of these proceedings. Allowing the amendment would require the claim to be particularised, a response to that claim and a hearing of the claim. I do not consider it would be fair or just to allow the amendment.

Conclusion

58. The Claimant was not an employee because:
    a. There was no mutuality of obligation;
    b. There was no requirement upon the Claimant to perform her work personally.

59. The Claimant was not a worker under s. 230(3) ERA 1996 as there was no requirement to perform her work personally.

60. The whistleblowing claim was not pleaded. It would not be fair or just to allow the amendment to the claim.

Approved by:
Employment Judge Chapman
2nd April 2025

Judgment sent to the parties on:

……07 April 2025…….

For the Tribunal:

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