EMPLOYMENT TRIBUNALS

Claimant: **Ilona Parda**

Respondent: **Abstract Recruitment Limited**

Heard at: **Midlands West Employment Tribunal in public via CVP**
On: 5/2/25

Before: Employment Judge Murdin

Appearances:

For the Claimant: Ms Janusz (Consultant)
For the Respondent: Mr Potter (MD)

JUDGMENT

1. In relation to the Respondent's application for a strike-out and/or the imposition of a deposit Order in respect of the Claimant's claim, the conclusion of the Tribunal is as follows:

2. At all material times, the Claimant was a worker for the purposes of s230(3)(b) of the Employment Rights Act 1996.

3. Consequently, the claims for unfair dismissal, automatic unfair dismissal and wrongful dismissal do not enjoy reasonable prospects of success for the purposes of Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.

4. The claims for discrimination are unaffected by this decision, and will proceed to trial. The claim has already been listed for a four-day final hearing from 14-17 July 2025 to determine liability. That hearing remains unchanged.

WRITTEN REASONS

The Complaints

5. The Claimant is making the following complaints:

   (i) Unfair dismissal;
   (ii) Automatically unfair dismissal;
   (iii) Pregnancy / maternity discrimination;
   (iv) Wrongful dismissal failure to pay notice pay.

The Background

6. The Claimant was engaged by the Respondent, a recruitment company supplying agency workers to the Construction, Driving, Manufacturing, Industrial and Warehouse sectors. The Claimant was engaged as an onsite recruitment coordinator. The Claimant was engaged from 25 October 2021 until 4 January 2024. The Claimant commenced maternity leave on 13 January 2023.

7. On 4 January 2024 the Claimant was told that the branch where she worked (Wolverhampton) had closed. She was offered a temporary position in Derby but was unable to accept, she says due to childcare and the distance. Early conciliation started on 8 February 2024 and ended on 23 February 2024. The claim form was presented on 23 March 2024.

8. The claim is about the Claimant's engagement ending at the end of her maternity leave. There is a dispute about the employment status of the Claimant. It is the Claimant's case that she was an employee, employed directly by the Respondent. The Respondent accepts that she was engaged directly by them but does not accept that she was an employee. Within the ET3 response the respondent stated that the claimant was an agency worker. They do not accept that she was an employee and their defence is that as a worker she did not have unfair dismissal rights, did not have notice rights and did not have the right to return to her role after maternity leave. The respondent denies that the claimant

was dismissed. The respondent states the branch which the claimant worked in Wolverhampton closed down and that the claimant was offered an alternative temporary role at the nearest branch in Derby but that she turned this down which was the reason her employment ended.

9. The claim was the subject of a previous case management hearing on 30th August 2024 before Employment Judge Knowles.

The parties' positions

10. I have heard evidence from both parties, and read the documents within the bundle. Their respective positions are as follows:

11. Within the Particulars of Response dated 24th April 2024, the Respondent avers that the Claimant's claim has no reasonable prospect of success on the grounds that she was employed as an agency worker on a contract for services. They allege that she was not an employee and therefore did not qualify for maternity leave or a notice period. Furthermore, the Respondent submits that the Claimant was not dismissed; it is said that she rejected an alternative temporary role offered to her by the Respondent.

12. Consequently, the Respondent applies for the claim to be struck out pursuant to rule 38(1)(a) of the Employment Tribunal Rules; and (b) for the same reason in the alternative, if the Tribunal is not minded to strike out the claim, the Claimant's claim has little reasonable prospect of success and the Respondent requests that the Claimant be ordered to pay a deposit in accordance with Rule 40 of the Employment Tribunal Rules as a condition to being able to continue to participate in the proceedings.

13. The Respondent relies upon the Terms of Engagement for Agency workers contained at page 34 of the bundle, which the Claimant signed on 25th October 2021. In particular, at paragraph 2.2, they rely upon the clause which states:

"*the Agency Worker will be engaged on a contract for services by the Employment Business. For the avoidance of doubt, the Agency worker is not an employee of the Employment Business…These terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker… The Agency Worker is supplied as a Worker*".

14. Furthermore, the Respondent stresses that it was a central part of the Claimant's role to explain the nature and contents of the contract to prospective candidates, so she clearly had a good understanding of the nature of the contract.

15. The Claimant, by contrast, alleges that was employed as an onsite recruitment co-ordinator. She says that she began her employment on 25th October 2021, although she never received any written contract or particulars of employment. She denies signing the contract, and claims that the signature is not hers. Unfortunately, I have no hand-writing evidence before me, and consequently, have to take that evidence at face-value.

16. She says that she worked a fixed number of days from Monday to Friday. Occasionally, she was requested to work overtime, and she was paid an hourly rate for the time she worked on a weekly basis. She worked on average between 25-30 hours per week.

17. The Claimant says that she was classed by the Respondent as their 'internal staff'. It was her understanding that she was the respondent's employee, as she worked directly for the respondent, under its management, had set responsibilities, pay and working days. She stressed that I should consider the reality of the situation – she worked fixed days, and was expected to be available when required. She was not in a position to refuse work, and if she was absent, she required the Respondent's approval, as she did when she worked from home.

18. The Claimant submits that the 3 factors required in a contract of employment – mutuality of obligation, control and integration were all present within the parties' relationship. She concluded that the terms of the written contract were not the

most important factor – that was the reality of the situation, and it was upon that reality that the Tribunal should focus its deliberations.

Consideration

19. The distinction between a worker and an employee has been the regular subject of disputes between parties in Employment Tribunals. The high profile decision in *Pimlico Plumbers Ltd v Smith [2018] UKSC 29, [2018] IRLR 872, [2018] ICR 1511* gave useful guidance. In that matter, the company used as its workforce 125 'contractors', including the claimant. They wore its uniforms, drove its marked vans and were represented to customers as its workforce. They were directed to customers by the company, who invoiced for the work. On the other hand, they were described in the agreement as self-employed, they had to look after all matters of their tax and NI, they provided their own tools and equipment, they were responsible for the quality of their work and had to be insured. The agreement stipulated a maximum working week over five days, but there was no obligation on either side to give or perform work; although there was some flexibility in who did what work, there was no formal substitution provision. Moreover, during his engagement the claimant considered himself to be self-employed, looked after his own tax affairs (on a trading basis) and registered for VAT. However, when his engagement was terminated, he claimed unfair dismissal (and certain other mainstream employment law rights), disability discrimination and outstanding statutory holiday pay. The tribunal held that on these facts: (1) he was not an 'employee' within the Employment Rights Act 1996 and so could not claim unfair dismissal (or the allied employment rights) but (2) he was a 'worker' so that his disability discrimination and holiday pay claims could proceed. The EAT agreed and by the time the case reached the Court of Appeal the claimant's cross appeal on employee status had been abandoned.

20. When the case went on further appeal to the Supreme Court ([2018] UKSC 29, [2018] IRLR 872, [2018] ICR 1511) and the decision of the ET was again upheld, the Supreme Court made clear that, despite of this being an appeal at the highest level, the decision was ultimately one on the facts with little attempt to give any wider guidance.

21. The second leading case is the decision in *Uber BV v Aslam*, which concerned the status of Uber taxi drivers. Their contractual arrangements with Uber were carefully drafted to negate legal liabilities including those relating to working time and the national minimum wage. They were permitted to work for other organisations (though substitution was not allowed), had to look after their own vehicle and licensing and viewed themselves as self-employed for tax purposes; there was no uniform and no Uber logo for their cars, and the elements of control that existed were primarily those required by statutory regulation for any form of public vehicle hire.

22. The basic argument for Uber was that it was just another (hi-tech) form of taxi /minicab business and that ultimately it provided an app-based service for the drivers; the drivers did not provide services for it. However, the tribunal held that the claimants were indeed 'workers' because the true relationship was not that set out in the 'carefully crafted' documentation; this was so each time they switched on the app and were able and willing to accept assignments (an important point also for defining 'working time' and working out their 'unmeasured work' for NMW purposes). On Uber's appeal, the EAT ([2018] IRLR 97) held that that was a conclusion open to the tribunal, relying primarily on the power to look behind contractual documentation to the reality of the relationship sanctioned in Autoclenz Ltd v Belcher [2012] UKSC 41, [2011] IRLR 820. On further appeal, the Court of Appeal ([2018] EWCA Civ 2748, [2019] IRLR 257) again rejected the employer's appeal, but with a split of opinion that was capable of muddying the waters further here. On further appeal, however, the Supreme Court ([2021] UKSC 5, [2021] IRLR 407) found unanimously for the drivers and upheld the ET's decision as to both status and timing.

23. The Supreme Court adopted with approval the approach taken in *Carmichael v National Power Ltd [2000] IRLR 43, [1999] ICR 1226*, a case in which there was no formal written agreement. This does not mean that the terms of any written agreement should be ignored. The conduct of the parties and other evidence may show that the written terms were in fact understood and agreed to be a record, possibly an exclusive record, of the parties' rights and obligations towards each

other. But there is no legal presumption that a contractual document contains the whole of the parties' agreement and no absolute rule that terms set out in a contractual document represent the parties' true agreement just because an individual has signed it. Furthermore, as discussed, any terms which purport to classify the parties' legal relationship or to exclude or limit statutory protections by preventing the contract from being interpreted as a contract of employment or other worker's contract are of no effect and must be disregarded.

24. It was clear however, that the question of status where the enquiry goes beyond simply the meaning of contractual terms remains one of fact.

Conclusion

25. In this instance, there was a written agreement between the parties. Despite the evidence of the Claimant, I find that it was signed by her. Given the passage of time, it is overwhelmingly likely that she had simply forgotten signing it, and there was no contradictory evidence before the Tribunal in respect of her handwriting.

26. To the extent that the contract purports to limit and/or exclude the Claimant's statutory protections, I disregard it. However, to my mind, a key feature in this instance is the role played by the Claimant within the Respondent's business. It was a central part of her role to explain the nature and contents of the contract to prospective candidates, and I agree with the Respondent's submission that in so doing, she must have had a good understanding of the nature of the contract.

27. The Claimant reminded me that the terms of the written contract were not the most important factor, and I should focus on the reality of the situation.

28. In focusing on that reality, I take into account the fact that the Claimant's hours frequently changed, that she did not receive any holiday pay yet she could take unpaid holiday without prior approval; furthermore, she had to submit a weekly time-sheet unlike the Respondent's employees, and consequently, she received a different amount every week for her wages.

29. Taking all of the above factors into account, and whilst there are inevitably some aspects of the relationship that appear to stray into that of an employer-employee relationship, on balance, I conclude that the Claimant was a worker for the purposes of s230(3)(b) of the Employment Rights Act 1996.

30. Consequently, and having concluded that the Claimant was at all material times, a worker for the purposes of s230(3)(b) of the Employment Rights Act 1996, the claims for unfair dismissal, automatic unfair dismissal and wrongful dismissal do not enjoy reasonable prospects of success for the purposes of Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.

31. The claims for discrimination are unaffected by this decision, and will proceed to trial as previously set out.

EJ Murdin

29th April 2025