EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms L Prestwich	**v**	Your Energy Your Way CIC

Heard at: via CVP **On:** 12 May 2025

Before: Employment Judge R Wood

Appearances
For the Claimant: In Person
For the Respondent: Mr Dempsey (Solicitor)

RESERVED JUDGMENT

After a Preliminary Hearing I find that the claimant was employed by the respondent under a contract of service and not a contract of apprenticeship.

DECISION AND REASONS

Claims and Issues

1. Page numbering referred to in square brackets in these reasons are to pages in the main hearing bundle, unless otherwise stated.

2. The hearing was before me in order to decide whether, at the material time, the claimant had been engaged by the respondent under either a contract of apprenticeship, or a contract of service. Indeed, as will be further discussed below, the parties were agreed that if there was a contract of apprenticeship, it was one under the common law, and not one prescribed by the considerable statutory framework in place for apprenticeships since 2009.

3. This is a preliminary issue. I need not concern myself with the main part of the claim save to say that it is for automatic unfair dismissal on the grounds of making

protected disclosures, direct age and sex discrimination, sex and age related harassment, and 'whistleblowing' detriment.

Procedure, Documents and Evidence Heard

4. The preliminary hearing was heard before me on 12 May 2024 via remote CVP hearing. I first of all heard testimony from the claimant, who adopted her witness statement. From the respondent, I heard evidence from Mr Richard Taylor who also adopted his witness statement which he signed and dated upon my request on the day of the hearing. I had an agreed bundle of documents which comprises 495 pages. I was assisted by helpful written submissions from the claimant. There was also an authorities bundle from the respondent.

5. In coming to my decision, I had regard to all of the documents referred to, even if a particular aspect of it is not mentioned expressly within the decision itself.

Findings of Fact

6. The claimant started her employment with the respondent on 18 September 2023. Her time with the respondent came to an end on or about 16 April 2024. The respondent, is a private limited company and community interest company (CIC). The Respondent provides renewable home energy solutions in the south east region. It has two social goals: firstly, to reduce carbon, and secondly, to increase diversity in the sector by providing opportunities for the under-represented. The claimant had been taken on as part of one of initiatives, namely to increase the participation of women in the renewables sector.

7. Richard Taylor is a Shareholder and Director of the respondent company, responsible for Business Operations with a particular focus on renewables in the Solar PV, Battery, and EV space. Leah Robson is the majority Shareholder and Managing Director.

8. The claimant had previously started an NVQ level 2 in plumbing in 2019/20. She had done what she could online but had been unable to find any on the job training, as she put it.

9. The work carried out by the respondent spanned a number of differing trades. In particular, they included electrician and heating engineer. To provide opportunities to those with a desire to become an electrician, the respondent offered a Level 3 Installation Electrician / Maintenance Electrician apprenticeship. Similarly, the route to becoming a Heating Engineer is via Level 3 – Plumbing & Domestic Heating. These apprenticeships provide a nationally recognised qualification gained through attendance at college and passing appropriate examinations, alongside work with an employer, typically over a 4-year period of combined college study and work experience. It was common ground between the parties

that there was a skills gap in relation to renewable energy installation, in that there was no recognised apprenticeship available.

10. The claimant was ostensibly engaged as a Trainee Renewables Technician. The bundle, which is my view was excessively long giving the nature of the issue to be determined, is full of literature and social media content which purportedly relates to the nature of the role taken on by the claimant with the respondent. In general terms, it is my view that much of this material was of tenuous relevance to the question of whether the claimant was engaged under a contract of apprenticeship or not. Much of it concerns comment made by third parties i.e. neither the claimant or the respondent. Much of it is dated well after the relationship between the parties had been established, and can therefore be of very limited (if any) relevance to the proper construction of the relationship between the parties. The literature produced by the respondent invariably talks about a "trainee renewables scheme" [92, 96]; "trainees" [93]; "traineeship" [96]; "renewables training programme" [97]. I note also that at [96] the document from the respondent makes mention of generous donation of a grant from Samsung to enable the traineeship to take place.

11. In my judgment, the important documents are as follows in determining the nature of the relationship between the parties. At [105] the claimant is offered her appointment on 23 August 2023. It also states "*As we explained at the assessment day, we have had to raise a significant amount of money to fund this programme and as such we have created a training agreement for all trainees. It's designed to recoup some costs of the programme in the event that having completed the training a trainee then decides to leave shortly afterwards. We hope never to enact it, as we hope that all trainees will stay with the firm long term and become part of our team*.".

12. The offer letter is on the following page [106]. It offers employment as a trainee renewables technician. It states that her work will primarily be at various customer sites as required. Her starting salary was to be £21,500 per annum. It also stipulated that "*Your normal hours of work will be from 08:30 to 17:00, on Mondays - Friday with one hour break during the day. However, these hours must be regarded as flexible and you may be required to vary them or to work such additional hours in excess of your normal hours of work as are reasonably necessary for the proper performance of your duties and to meet the needs of the Company's business".*

13. It sets out a three month probationary period within which the respondent could terminate on one week's notice "for whatever reason". The respondent reserved the right to extend the probationary period to 6 months. Thereafter, the appropriate periods of notice are to be set out in her contract of employment.

14. At [108], there is a 'Undertaking to repay costs incurred during training' document dated 22 August 2023. It notes that "*….The Employee is employed by the Employer as a Trainee Renewables Technician……The Employee has obtained a*

place in relation to a course of study as part of the Trainee Renewable Technician Programme ('the Course')…..". In summary, the undertaking was to the effect that the claimant would be liable to repay some or all of the costs of the 'programme' should the claimant leave within a certain time frame; such sums to be deducted from her final wage slip but capped at £20,000. I find that the claimant agreed to be bound by this undertaking.

15. It was the claimant's case that this aspect of the agreement between the parties was consistent with it being a contract of apprenticeship. She was asked about this document at the hearing. It was suggested to her by Mr Taylor that this sort of agreement was common in contracts of service. She said she was not sure. She said it tended to demonstrate the extent of the training being provided which she said was considerable. I find that this agreement is more consistent with the existence of a contract of service. In my judgment, it would be unusual for there to be a clause in contract of apprenticeship whereby the cost of the academic element of the apprenticeship could be recouped.

16. There then follows the claimant's contract of employment at [149]. It again describes her as a trainee renewables technician. Her responsibilities are said to be set out in a job description. However, I did not have access to this document at the hearing. The respondent reserved the right to require the claimant to carry out other reasonable duties. It also stated:

> "*11. Termination of employment: The Employer will give four weeks' notice of termination during the course of this contract. You are required to give four weeks' notice if you wish to terminate this contract. The Employer reserves the right to pay your basic salary in lieu of notice instead of requesting that you work your notice period. In these circumstances you may not be employed by any other person or company whilst receiving pay in lieu of notice. The Employer reserves the right to dismiss you without notice in cases of serious breach of the terms of your employment, gross misconduct or gross negligence by you.*"
>
> *13. Dismissal In case of gross misconduct there will be no period of notice given. If you are in your probationary period or first year of employment, only one warning is required before dismissal.*

17. The contract of employment makes reference to the staff handbook which is included in the bundle at [114]. This includes a training policy [125]:

> *"7. Training policy 7.1 About this policy This policy sets out the arrangements for staff undertaking or wishing to undertake training. This policy covers all staff at all levels and grades, including full-time, part-time, permanent, and fixed term employees, managers, directors, trainees, and homeworkers."*

It is noteworthy that the policy does not appear to have extend to the apprentices, of which there were at least two at the respondent. Otherwise, the policy is not relevant to this claim. In terms of the staff handbook, it states in relation to disciplinary matters, that the respondent can dismiss in circumstances outside of gross misconduct.

18. In passing, I make the observation that at no point in any of these documents is there a mention of this being a contract of apprenticeship. It is repeatedly stated to be a trainee contract of employment. Of course, I accept that the labels applied to relationships by parties to litigation can sometimes be misleading and are not necessarily determinative of this type of issue.

19. To return to the contract, there is no suggestion that the contract is for a fixed period. During the course of the hearing, the claimant made reference to [262] on this point. This appears to have been an advert for the job for which the claimant applied. In fairness to the claimant, it states in the clearest terms that the respondent is looking for trainee renewables technicians with 2 years on the job training, i.e. that the post will last for two years with the "*possibility of further employment upon completion"*. This would certainly be more consistent with a contract of apprenticeship.

20. However, the contractual documents issued to the claimant upon the claimant's recruitment are not in those terms i.e. the mention of a fixed term has gone. When asked about this, the claimant conceded that she had not asked about this when she was given and signed her contract. As she was to repeat in other similar instances, the claimant took the view that the document at [262] was more significant than the written and signed contract itself in terms of defining the relationship between the parties. In my judgment, this is a difficult submission to justify in context of the law in this area.

21. Another example of this was evidence in the claimant's cross-examination of Mr Taylor when she referred him to a transcript of a youtube video at [269]. She suggested that this was a video that was part of the recruitment campaign for her role and aimed at generating crowd funding. It was suggested that the content of the video was contractually binding on the respondent as to the terms of the relationship with the claimant. I was not at all clear to which part of the transcript the claimant was referring. Notwithstanding, I disagree that it was likely, in the circumstances, be viewed as a contractually significant statement.

22. The claimant stated in evidence that her mind had been "fuelled by the events when being recruited" as opposed to the contractual documents themselves. In fairness to her, Mr Taylor was to later conceded in cross-examination that he might have told the claimant during the recruitment stages that the role was like "an old school apprenticeship". He went onto explain that it was not an apprenticeship but employment with on the job training. The claimant stated that she had not raised

what she perceived were inconsistencies of language used because she said had not been familiar with what a contract of apprenticeship looked like.

23. However, I find that the respondent was clearly aware of the distinction between a contract of service and a contract of apprenticeship. There were apprentices working for the respondent at the material time. There were three trainee renewable technicians at the time, one off which being the claimant. There were two apprentices. At [153] onwards there are examples of the agreements entered into by the apprentices. They are clearly of a different nature to the contract signed by the claimant. The one at [153] is clearly titled "Apprenticeship Heating Engineer-Contact of Employment:". Then apprentice is to work towards a specific NVQ qualification. It is for a fixed 4 year period. The amount of off the job training is expressly prescribed to be at least six hours a week. There is no period of probation and the terms relating to termination are different to those of the claimant (although it does seem to preserve the respondent's right to terminate on notice outside instances of gross misconduct). In evidence, the claimant conceded that she had never signed an agreement like this with the respondent.

24. The apprentices were all required to enter into training plans, an example of which is to be found at [171]. These specify the apprenticeship standards and level, and prescribe minimum hours of off the job training and practical work [172]. The document appears to set out a tripartite arrangement between the respondent, the apprentice and the college (see also [247]). Mr Taylor confirmed that these were ASCLA compliant apprenticeship agreements. On its face, I find that it is markedly different in form to the arrangement between the claimant and the respondent. It also starkly demonstrates the differing intentions of the respondent in terms of the claimant as opposed to the other apprentices.

25. Of course, a determination of the nature of the contractual relationship between the parties is not limited to an examination of the relevant documents but must also extend to an assessment of the conduct of the parties. To this end there was considerable testimony given as to what in fact that claimant did on a day to day basis with the respondent.

26. It was the claimant's case that there was a heavy focus on training and that in this way it was typical of a contract of apprenticeship. Of course, there is likely to be a significant element of training involved with a training contract. The distinction between the two will lie in the nature and extent fo the training provided, and in whether the focus is on work or on the training. It was the claimant's submission that the purpose of her being there was primarily training and that the company did not make any financial gains (as she put it) from what she was a doing work wise. She said this was why the programme had been funded by third party donations.

27. I find that for the majority of the time i.e. about 9 days out of 10, the claimant would be sent out on site with a skilled plumbing and heating engineer to carry out work

for customers. Otherwise, she would be in the office at Egham doing e-learning. Also, on a fortnightly basis, she would be sent to various third parties, including a Mr Nathan Gambling, who would provide some relevant learning. Mr Gambling and the others were not an employee of the respondent but were paid by it to "pull together the trainees understanding of what they had done in the last 2 weeks", according to Mr Taylor.

28. I note at this point the document at [322] which is entitled 'Renewable Energy Course Structure". It stated that the over-arching goal was to create "Competent and Confident Renewable Energy Engineers. Knowing how to design, install, service and repair whole home installations and renewable retrofits from heat pumps and heating systems to solar power, battery and EV chargers to MVHR and ventilation modifications for healthier and sustainable lives.". In fairness to the claimant's case, it contains a fair amount of detail. This agreed curriculum had been pulled together in January 2024 according to Mr Taylor. I accepted this evidence. It was also apparent that the aim of this training was not to work towards a recognised qualification such as an NVQ, but seemed to be purposed to equip the trainees to be able to do the job independently.

29. The claimant was on site most days carrying out work for customers, albeit under supervision. She said that she worked installing underfloor heating, heat pumps, cylinders, radiators and solar panels (although this was less frequent). The claimant also accepted that this work crossed a number of different trades including electrical, heating and plumbing. She accepted that she was not learning a single trade.

30. On 11 January 2023, the Claimant sent an email to Leah Robson [62]. This email stated that the Claimant was "getting incredibly frustrated with how things are being run", and further stated that "it's really starting to feel like this is just low wage labour rather than training". In my judgment, this is symptomatic of a situation in which the emphasis was very much on work and not on training. Indeed, it seems that this was the very thing that the claimant was complaining about. There was no evidence before me that the claimant had, at any time during her employment with the respondent, complained that she was not undertaking an apprenticeship.

31. Mr Taylor was clear in that the respondent had employed trainees so that they could contribute significantly to the work that needed to be completed. They had wanted more people to be able to deliver on projects. It was different in focus to the apprenticeships and incorporated the whole scope of house renewables. I accept his evidence in this regard

32. Mr Taylor accepted that after the claimant's termination that the other trainees had been swapped over onto contracts of apprenticeship. A new government funded apprenticeship in low carbon heating had become available. The other trainees had been spoken to to see if they wanted to make the change. They said they were. They were enrolled in college at London South bank in September 2024. After the

trainees were switched over to contracts of apprenticeship, Mr Taylor explained that they were replaced by sub-contractors on projects. Another employee was recruited as well.

33. Mr Taylor was asked about the apprenticeship agreements at [153]. He explained that they differed from the trainee contracts in that the apprentices were learning a trade with a specific aim in terms of their career paths. They attended college one day a week with an agreement between the respondent and the college as to how much time they spent at college. Whereas the claimant was required to learn on the job whilst delivering on projects. He said the apprentices were not required to sign undertakings about the recovery of training costs. I accepted this testimony.

34. I should add that I found Mr Taylor to be a clear and concise witness of fact. In contrast, although the claimant had evidently put a lot of time into preparing the various facets of her case, I found she often lacked focus. This resulted in her evidence being sometimes quite confusing. Where there was a dispute between the claimant and Mr Taylor about a key issue, I tended to prefer the evidence of the latter, as I found him to be in general terms a more credible source of information, not least because his testimony was consistent with the documentation I had been shown.

35. I need not go into this aspect of the claim now in any great detail, but it is alleged by the respondent that over a period of months it had developed a growing number of concerns as to the claimant performance up to April 2024. These are denied by the claimant. In any event, on 16 April 2024, there was a meeting between the claimant and Leah Robson at the conclusion of which the claimant was dismissed [198-199]. She was not required to work out her four weeks notice period which was paid in lieu. The claimant subsequently issued a claim in the Employment Tribunal on 22 August 2024.

Legal Framework

36. Although a contract of apprenticeship is treated in the same way as a contract of service for many statutory purposes, the two types of contract are significantly different. Unlike a contract of service, which has as its object the performance of work, the primary purpose of a contract of apprenticeship is training. Therefore, there is no need for the mutual obligations of work and pay that characterise a contract of service.

37. In *Dunk v George Waller and Son Ltd 1970 2 QB 163, CA*, Lord Justice Widgery observed: ‘A contract of apprenticeship secures three things for the apprentice: it secures him, first, a money payment during the period of apprenticeship, secondly, that he shall be instructed and trained and thus acquire skills which would be of value to him for the rest of his life, and, thirdly, it gives him status….’. Although not intended to be an exhaustive list of the essential elements of a contract of

apprenticeship, this indicates the manner in which such a contract differs from a contract of service.

38. The parties' failure to use the word 'apprentice' in agreeing the work and training arrangements will not of itself mean that the contract is not one of apprenticeship. That being said, the EAT in *Commissioners for HM Revenue and Customs v Jones and ors (Trading as Holmescales Riding Centre) 2014 ICR D43, EAT*, made the point that, while it is not determinative, it is legitimate for the court to have regard to the way in which the parties have chosen to categorise their relationship. The case concerned the status of live-in workers engaged by the owners of a riding school. Their tasks were to help with the care and maintenance of the stables and horses and to take some of the riding lessons. The workers were paid a modest weekly wage and given training and the opportunity to acquire professional qualifications. HMRC issued a notice of underpayment against the school owners in respect of the national minimum wage (NMW) and the owners appealed to an employment tribunal against that notice. An employment judge held that the workers were apprentices and that consequently the apprenticeship rate applied.

39. The EAT disagreed. In reaching its conclusion that the individuals worked under a contract of service and not apprenticeship, the EAT considered that the training was incidental to the work that they carried out and that the essential characteristic of apprenticeship was thus missing. Furthermore, a contract of apprenticeship must be for a fixed term with an 'objectively ascertainable' end. This can be a specific end date or the happening of a certain event such as the conclusion of a prescribed course of study or training plan. Although the employees in the instant case had the opportunity to study for qualifications, there was no requirement for them to do so and no fixed timescale should they choose to take them. A further significant factor in the EAT's considerations in *Jones* was the fact that the contract contained a provision allowing for dismissal for gross misconduct without notice. Provision for early termination is generally considered to be inconsistent with a contract of apprenticeship.

40. In *Flett v Matheson 2006 ICR 673, CA*, the Court of Appeal held that a tripartite 'individual learning plan' under the electrical industry's Modern Apprenticeship training scheme gave rise to a contract of apprenticeship. In the Court's view, the tripartite nature of the agreement — between the apprentice, the employer and a Government-sponsored training provider — did not deprive the relationship between employer and apprentice of a long-term character which persisted until the end of the training period contemplated. Although the employer did not provide the academic part of the training, it was required to give the claimant time off to obtain it and to fund the cost of attendance at classes.

41. When ASCLA came into force, it replaced the Modern Apprenticeship scheme with a detailed statutory framework for Government-funded apprenticeships under the

Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). Sections A5 and 35 of ASCLA expressly state that apprenticeship agreements that meet the statutory criteria are to be treated for all purposes as contracts of service, not contracts of apprenticeship. Thus, the case law cited above is now of only limited application in England and Wales, since any apprenticeship that complies with the ASCLA conditions — which it must do if it is to be eligible for state-funded training — will not give rise to a contract of apprenticeship. However, the case law will still be relevant to the few apprenticeship arrangements that are set up outside the ambit of the statutory scheme.

Discussion

42. In my judgment, in deciding whether the said contract was one of apprenticeship under common law or one of service, it is appropriate to focus on the following factors: whether training is the principal purpose of the contract; the duration of the training; the level of qualifications to be gained; the contractual intention of the parties; and the labels and language that the parties applied to the relationship. Further, and in the normal course of events, a contract of apprenticeship, will fixed term in nature, and will terminate on the date, or at the end of the period, specified in the contract. It is a feature of contracts of apprenticeship that they cannot usually be terminated earlier except in cases of serious misconduct by the apprentice. Although a contract of apprenticeship can be brought to an end by some fundamental frustrating event or repudiatory act, it is not terminable at will as a contract of employment is at common law. Neither redundancy nor the kind of personal unsuitability which might well justify the dismissal of an employee' has any effect on a contract of apprenticeship.

43. For all of the reasons set out in the findings of fact above, I am satisfied that this was not a common law contract of apprenticeship. There is no question that the contract between the claimant and the respondent satisfied that statutory framework in ASCLA. Indeed, there had been no attempt to comply with those requirements. It was common ground that there was no appropriate government funded apprenticeship for the sort of house renewable energy installation at the time. It was therefore the specific intent of the respondent that this was not a apprenticeship.

44. As for the claimant's intent, it is more difficult to assess reliably. The claimant asserts now that she was induced to apply for the role because she believed that it was an apprenticeship. One can see from the nature of her claim that her alleged status as an apprentice would be of some potential advantage to her as a matter of law. However, I did not accept her evidence on this point. It was difficult to see what might have persuaded her to think that this was an apprenticeship. I could find no written reference to this being a contract of apprenticeship, either pre-contract, or within the contractual documents themselves. The claimant's case at its highest was that Mr Taylor made a remark during recruitment that it was like an old fashioned apprenticeship. I find that this was a rather informal and off the cuff remark, and is

difficult to view as contractually significant. If the claimant had genuinely had it in her mind that she was being recruited as an apprentice, then one would have expected her to have raised the issue when she read the offer letter, and contract of employment, which are both perfectly clear that this was a training position and not an apprenticeship. In the absence of the claimant raising a query, I am satisfied that the claimant was, at the time she signed her contract, satisfied that it was a not a contract of apprenticeship but one of on the job training. Views expressed to the contrary have, in my judgment, evolved after her dismissal and are not reliable.

45. In my judgment, the labels applied to this relationship further assist the respondent in that it is evident that it made a clear and informed distinction between apprenticeship and on the job training. As I have stated, the respondent employed three trainees (including the claimant) and two apprentices. The way in which these two groups were handled in terms of the written documents could hardly be more different for the reasons.. The relevant features of distinction are as follows:

    (i) It is clear that there was a more formal and structure training plan for the apprentices, who went to college one day a week, paid for out of government funds, whereas the trainees went out to a variety of different providers every two weeks, paid for by the respondent;

    (ii) The apprenticeships had a fixed four year term; the training contracts were open ended;

    (iii) The apprenticeship contracts were tripartite in nature involving a college; whereas the training contracts were simply between the claimant and respondent;

    (iv) The apprenticeship contracts were clearly labelled as so, whereas the training contracts were labelled as training positions;

    (v) The apprentices worked to specified and recognised NVQ qualifications, whereas the training goal was more nebulous and not recognised.

46. In fairness to the claimant's case, there is some structure to the training aspect of the claimant's contract. I note the document at [322]. This is a factor potentially in support of the claimant's submissions. However, I have regard to the fact that the training is less frequent and is not at an educational institution. In my view, the arraignment feels less formal, and that when looked at in the round it was symptomatic of a difference of focus between the contracts of apprenticeship and the trainee roles. I accept the evidence from the Mr Taylor that the trainees were employed to carry out work on customer projects, albeit supervised, and that this was the focus or priority. I find that for the vast majority of the time, the claimant was on site doing the job. Indeed, it was what probably lead to her protestations in January 2024, namely that she was being used as low wage labour.

47. It is also a significant factor in this case that the contract was for an indefinite period, and that the respondent reserved the contractual right to dismiss at will on notice and/or for disciplinary/performance related issues. The contract states an initial right to dismiss prior to the expiry of a probation period, and then to terminate the contract pursuant to the disciplinary procedures set out in the staff handbook. These are all matters which pursuant to the case law are generally seen as inconsistent with the existence of an apprenticeship.

48. It is in relation to the lack of a fixed term of her contract where the weakness of the claimant's case is revealed. She submits that I should construe the contract as incorporating a two year fixed term. She basis this on comments made in recruitment material which she says should take priority over the clear and express wording of her written contract. In my judgement, this is erroneous as a matter of law.

49. For all of the above reasons, and looking at the evidence in the round, I am satisfied that the weight of evidence supports the respondents case, namely that this was not a contract of apprenticeship but one of service, involving on the job training but where the focus was on the work and not the training.

50. I therefore find against the claimant on this preliminary issue.

Employment Judge R Wood

Date: 26 June 2025…….

Sent to the parties on:22 July 2025

For the Tribunal Office