



# EMPLOYMENT TRIBUNALS

## Claimant

Mrs Audrey Robinson

v

## Respondent

The Estate of Lloyd Baines

**Heard at:** Norwich

**On:** 20 March 2025

**Before:** Employment Judge M Warren

## Appearances:

**For the Claimant:** In person  
(assisted by Ms L Williams, friend)

**For the Respondent:** Ms G Holden, Counsel

**JUDGMENT** having been sent to the parties on 15 April 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Background

1. The issues in this case were identified by Employment Judge McCooley on 9 December 2024 as set out below:

1. Employment Status

1.1 Was the Claimant an employee or worker of the Respondent within the meaning of s.230 of the Employment Rights Act 1996?

2. Time Limits

2.1 Given the date the claim form was presented and the dates of early conciliation, the complaint may not have been brought in time.

2.2 Was the breach of contract claim made within the time limit in Regulation 7 of The Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994?

3. Wrongful dismissal / Notice pay

3.1 The Claimant's contractual notice period was 3 months.

- 3.2 Was the Claimant paid for that notice period?
- 3.3 When was the Claimant given notice by the Respondents?
- 3.4 What was the effective date of termination of the contract?

**4. Remedy**

- 4.1 How much should the Claimant be awarded?

**Evidence**

- 2. The evidence which I have heard today is contained within four witness statements: two from Mrs Robinson and two from Miss Rosemary Baines. Those statements are contained within a Bundle containing the documents both sides wish to refer to which was prepared for me by the Respondent's solicitors, for which I am grateful.
- 3. It has not been necessary to add any further documents to the tribunal record during the course of the hearing.
- 4. I read the witness statements and looked at the documents referred to before commencing this hearing. I then heard oral evidence from Mrs Robinson and Miss Rosemary Baines.

**The Law**

*Time*

- 5. Section 23 of the Employment Rights Act 1996 requires that a complaint about non-payment of wages must be made within 3 months of the date on which the payment should have been made. Similarly, the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, Article 7 (b) requires that a claim in breach of an employment contract, (for example for notice pay) must be made within 3 months of the date of termination of employment.

*Constructing the Contract*

- 6. The objective in constructing a contract is to establish the intention of the parties. That question is to be approached objectively, put this way in Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896:

*"The meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they are in at the time of contract".*

- 7. It is a cardinal principle of constructing a contract that the parties must have intended what they in fact said. But we do look at the circumstances surrounding the contract to assist us in determining how the language of the document would be understood by the reasonable person. The starting point is to attribute to the words in the contract their ordinary and

natural meaning.

8. A term of a contract may be implied rather than expressed. A term may only be implied if one can presume that it would have been the intention of the parties to include it. To make such a presumption, a court must be satisfied as to one of the following:
  - 8.1. The term must be necessary so as to give the contract business efficacy. In other words, to make the contract workable in practicable terms.
  - 8.2. It is normal custom and practice to put such a term in the particular kind of contract in question. The custom and practice must be reasonable, notorious and certain, (see Sagar v H Ridehalgh and Son Ltd [1931] 1 Ch 310 CA) so it must be fair and not arbitrary, it must be generally established, well known and clear-cut.
  - 8.3. There was an intention to include such a term, evident from the way the contract has been performed.
  - 8.4. It is so obvious, it must have been the parties' intention to include it: if asked by the "officious bystander" whether a particular term was included in the contract at the time it was entered into, would the parties have replied, "oh, yes of course", (see Shirlaw v Southern Foundries (1926) Ltd [1939] 2 KB 206 CA).

#### *Death of Employer*

9. Where a contract of employment is with an individual employer, the death of the employer will automatically dissolve the contract, (unless there is express or implied provision to the contrary) Farrow v Wilson 1869 CP 744. There is no wrongful termination or dismissal.

#### *Employment Status*

10. In Readymix Concrete South East Ltd v The Ministry of Pensions and National Insurance 1968 2 QB 497 (approved by the Supreme Court in Autoclenz Ltd v Belcher and Others [2011]UKSC 41), McKenna J identified 3 questions to help determine whether a contract of employment exists:
  - 10.1. Did the worker agree to provide his own work or skill (i.e. personally although limited or occasional delegation may not be inconsistent) in return for remuneration? There must be remuneration, in other words, consideration, for there to be a contract.
  - 10.2. Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of master and servant?
  - 10.3. Were the other provisions of the contract consistent with its being a contract of service?
11. In Carmichael v National Power Plc 2000 IRLR 43 Lord Irvine of Lairg

spoke of an irreducible minimum of control, mutual obligation and obligation of personal service, necessary to create a contract of service.

12. Sir Patrick Elias explained in James v Greenwich Council UKEAT/0006/06/ZT that this means that for there to be any contract at all, there must be mutuality of obligation. To place the contract in the employment field, those obligations must relate in some way to the provision of or payment for work which must be done personally by the individual. One must then look to the nature and extent of control, if it is sufficient, that contract will be a contract of employment.
13. The presence of the irreducible minima do not make the relationship one of employer and employee, but without all 3 such a relationship will not exist. A Tribunal then has to look at all the other aspects of the relationship; the third limb of test set out in Ready Mix Concrete. That involves considering for example: -
  - 13.1. Can the Claimant send a replacement and if so, who does the employer pay, the claimant or the replacement? (MacFarlane v Glasgow City Council [2001] IRLR 7).
  - 13.2. The length of time the relationship has subsisted; a long time can infer an intention on the parties' part that the relationship be permanent and that a contract of service is implied. (See e.g. Franks v Reuters Ltd [2003] IRLR 423).
  - 13.3. Is the Claimant integrated into the employer's business?
  - 13.4. Is the Claimant in business on their own account, running their own business, taking a financial risk, providing their own capital?
  - 13.5. Does the Claimant provide their own tools and equipment?
  - 13.6. The regularity of payment.
  - 13.7. How tax and national insurance is paid.
  - 13.8. Was the Claimant free to work elsewhere?
  - 13.9. What labels do the parties put on their relationship? (Note that the fact that the parties choose to use a particular label is not determinative, (Young & Woods Ltd v West [1980] IRLR 201).
  - 13.10. How is the relationship terminable? (A power to dismiss, in the words of Harvey at A [82] "smacks of service").
  - 13.11. What, if any, are the arrangements for sick pay and holiday pay?
  - 13.12. Are there any provisions for pensions?
  - 13.13. Is there any flexibility in the hours worked?
14. There will be other factors in an individual case that will be relevant to take into account in painting the overall picture. As Mummery J said with the subsequent approval of the Court of Appeal in Hall (Inspector of Taxes) v

Lorimer [1994] IRLR 71:

*“The object of the exercise is to paint a picture from the accumulation of detail...It is a matter of evaluation of the overall effect of the detail which is not necessarily the same as the sum of the individual situation”.*

15. The exercise is not one of simply preparing and ticking off a checklist. It is not a case of counting up the factors pointing one way or the other, nor, generally speaking, is any one factor likely to be determinative.
16. That said, an unfettered discretion to send a substitute is inconsistent with personal service, (Pimlico Plumbers Ltd v Smith [2017] ICR 657 CA).

### **The Facts**

17. This is a case which involves a family. It is a set of circumstances which it has to be said, do not readily lend themselves to an employment relationship and the jurisdiction of the Employment Tribunals.
18. Mrs Robinson was sister to Lauren Baines, who was married to a gentleman called Lloyd Baines. Lloyd Baines had a daughter called Rosemary Baines, the Miss Baines who gave evidence today. She is step daughter to Lauren Baines. Lauren Baines had a daughter called Lorna Baines.
19. In or about 2015, a Power of Attorney deed was executed and entered into appointing Rosemary Baines attorney for the affairs of Mr Lloyd Baines. He had suffered a stroke, there was an element of physical incapacity, he had mental capacity at all times. Rosemary Baines therefore assisted Mr Baines in the administration of his affairs.
20. As time went by, Lloyd and Lauren Baines needed more and more care as they aged. Sometime in January 2023, the precise date is uncertain, Mr Lloyd Baines and his sister in law the Claimant Mrs Audrey Robinson, had a discussion about Mrs Robinson moving in with Mr and Mrs Baines to provide them with personal care. They agreed the terms on which she would do that. Mrs Robinson then had a conversation with Miss Rosemary Baines about what had been agreed between Mrs Robinson and Mr Baines. Miss Rosemary Baines asked Mrs Robinson to put in writing what had been agreed.
21. Mrs Robinson then sent an email to Miss Baines, (at page 51 of the Bundle). The email contained the contract as follows:

“Dear Rosie

Further to our discussion about terms and conditions of employment, I write to confirm that I am available for work on the 01/02/2023. On the condition of being self-employed – meaning that I am responsible for paying National Insurance and Tax. That I am paid £150 per day. That I provide 24 hours care and that I am responsible for my own holiday and cover arrangements.

My employer should be able to provide accommodation and be responsible for ad hoc cover if I am on any appointment with either Mr or Mrs Baines... meaning hospital visits or accompany either of them for any other engagement.

Employment entails personal carer for Mr and Mrs Baines if and when needed. Cooking and preparation of food suitable for their dietary needs. Laundry and ironing. Cleaning, sorting and organising the home and shopping for groceries. Over see the maintenance of the property if needs be.

Three months' notice to end contract and vice versa if employers are not happy with performance."

22. Miss Rosemary Baines spoke to her father, he confirmed those were the terms he had agreed with Mrs Robinson and so the deal was done, as it were.
23. Mrs Robinson confirmed in evidence that all of this came about as a result of Mr Lloyd Baines summoning her to his house, that he had put a proposal to her, that he had in effect recruited her and he had discussed and agreed terms with her, which she then put in writing to Miss Rosemary Baines who had asked the father whether those terms were agreed and he confirmed they were agreed.
24. The contract then, (page 51 of the Bundle) was between Mrs Audrey Robinson and Mr Lloyd Baines. She had set out the terms and Mr Baines had agreed them. She had stipulated self-employment, that she would pay her own Tax and National Insurance, (she did that because she wanted to make sure that Tax and National Insurance was paid regularly).
25. Mrs Robinson regularly arranged for others to replace her as carer for Mr and Mrs Baines, usually other members of the family. She continued to receive payment at her daily rate on such occasions and she took responsibility herself for paying whoever the replacement was.
26. Miss Rosemary Baines, as Attorney, had access to Mr Lloyd Baines' accounts. That included an account that was in the joint names of Mr and Mrs Baines and also an account which was in the joint names of Mr Baines and Miss Rosemary Baines. It is the joint account of Mr and Mrs Baines that Mrs Robinson was paid from.
27. Mrs Robinson began working for and caring for Mr and Mrs Baines in 2023. At some point, it is not entirely clear when, Mrs Lauren Baines developed dementia and her daughter Lorna was appointed her Attorney. It is not clear to me when. Lorna Baines and Mrs Robinson did not get on; there was enmity between them.
28. On 28 September 2023, Mr Baines had a fall and was admitted to hospital. Sadly, he never came home. He went into a nursing home on 3 November 2023 and died on 15 January 2024.
29. On Mr Baines death, Miss Rosemary Baines' Power of Attorney ceased. She no longer had legal authority to deal with his affairs. She no longer

had access to the account which had been in the joint names of Mr and Mrs Baines. She still had access to the account that had been in the joint names of her father and herself, which contained funds that were intended to be used for his funeral arrangements and other costs arising on his death.

30. The money that was in the joint account of Mr and Mrs Baines, became the money of Mrs Baines only. That then was subject to the control of Lorna Baines as Attorney for Lauren Baines.
31. On 15 January 2024, the day that Mr Lloyd Baines died, there was a discussion between Mrs Robinson, Miss Rosemary Baines and Miss Rosemary Baines' sister, a Miss Treasure. It was explained to Mrs Robinson that the Power of Attorney had come to an end and that Miss Rosemary Baines no longer had control over the account, that the monies were now under the control of Lorna Baines and that Mrs Robinson would need to speak to her about ongoing care for her sister, Lauren Baines.
32. In this conversation, Mrs Robinson made it clear that she did not wish to continue with the care of her sister Lauren, because she could not work with Lorna. That that was what was said at that time is corroborated by what I think are WhatsApp messages. They are photographs of Miss Baines' telephone, (pages 52 and 53 of the Bundle). They show that somebody called Etoile, who I think was Mr Baines' brother, had said to Miss Rosemary Baines that she should try and encourage Miss Robinson to stay with Mrs Lauren Baines until Lorna had put something in place. In reply to that message, Mrs Robinson had written,

"No way, Lorna is spiteful, too spiteful, I am not letting her do to me as she has done to the others. I really can't let her dictate my life, I feel for Lauren."
33. Rosemary Baines and her sister Miss Treasure were appointed executors under Mr Lloyd Baines Will, but probate even now has not been granted, so they do not at present have legal authority to deal with his estate.
34. On 25 January 2024, Miss Rosemary Baines offered as a gesture of good will, to pay Mrs Robinson to the end of February if she remained looking after Mrs Lauren Baines. On 23 February 2024, she wrote to confirm the proposal, (at page 55 of the Bundle). This refers to,

"...our previous conversations and our conversation today".
35. This corroborates Miss Rosemary Baines' account that there had been a number of conversations with Mrs Robinson in which the situation was made clear and that she was being paid to remain as a gesture of good will and that her relationship with the Lloyd Baines' side of the family had come to an end.
36. It is clear there had been a number of conversations about that, as well as a conversation on 23 February 2024 before that email was sent.
37. The email spells out what I have already explained, which is that the Attorney had come to an end on the death of Mr Baines, that Miss Rosemary Baines no longer had access to his account and as a gesture of

good will, it was agreed she would be paid until the end of February to continue caring and supporting Mrs Lauren Baines. The final payment is again repeated to have been made as a gesture of good will as the funds are not from an account that was held in the joint names of Mr and Mrs Baines. It explains that the assets of Mr Baines had been frozen pending probate.

38. Mrs Robinson continued to provide care to 1 March 2024, she was paid to that date by Miss Rosemary Baines from the account which had previously been in the joint names of herself and her father.
39. Early Conciliation was commenced on 8 May 2024 and continued until 19 June 2024 with the named proposed Respondent, Miss Rosemary Baines.
40. There was a second Early Conciliation Certificate with the name of the proposed Respondent 'the Lloyd Baines Estate' between 2 July 2024 and 12 July 2024.
41. These proceedings were issued on 31 July 2024.

### **Conclusions**

42. There was clearly a contract between Mrs Robinson and Mr Lloyd Baines. That contract came to an end, dissolved, on his death. There is no express provision in the contract, but could there be implied a provision that the contract should continue following his death? There is no evidence of any intention for any such provision and there is no custom or practice that there was such provision in these arrangements.
43. The question then is whether such a provision was necessary. My conclusion on that is that it was not necessary, because actually, such an arrangement would not be practicable. It would not be practical because the affairs of Mr Lloyd Baines, his assets, would be frozen until the grant of probate, which is a lengthy process.
44. As for the ongoing care for Mrs Lauren Baines, that became the responsibility of Lorna Baines, not Mr Lloyd Baines' Executors.
45. The contract then came to an end not by wrongful termination, but by dissolution on the death of Mr Baines on 15 January 2024. Rights under the contract not already crystallised prior to his death cease, there was no right to notice.
46. The Employment Rights Act 1996, Section 218(4) to which Ms Holden very fairly referred me, does not assist Mrs Robinson. The contract was not continued by the Estate. There was a good will payment only, it was not a contractual payment and it was not pursuant to a contract, the contract had dissolved. Mrs Robinson had made it clear on 15 January 2024 that she was not going to continue with the arrangement.

### ***Time Limits***

47. On the question of time, the contract having come to an end on



15 January 2024, any rights pursuant to it under the Employment Rights Act 1996 must be subject of a claim in the Employment Tribunal within three months. Those three months would be up on 14 April 2024 and Early Conciliation in respect of Miss Rosemary Baines was commenced on 8 May 2024, after time had already lapsed. When asked if there was any reason for delay, I was told that this was caused by a lack of reply by Miss Rosemary Baines to correspondence. That is insufficient to render it not reasonably practicable for the claim to have been issued in time. The claim was therefore out of time.

**Status**

48. As to status, the labels that parties attribute to themselves – employed, self-employed, employer, employee – and the fact that Tax and National Insurance may be paid by the individual, are not in themselves determinative as to employment status, but they are relevant. They are amongst a number of relevant factors that will be given due consideration in trying to formulate and construct whether there is an employer/employee relationship.
49. In this instance, perhaps a little unusually, it seems that there was equal bargaining power between Mr Baines and Mrs Robinson. She drew up the contract herself, she chose the labels that she used, including quite deliberately, the label that she would be self-employed.
50. It is true to say that Mrs Robinson was not free to work anywhere else and she was paid regularly, monthly, a fixed amount. Those arrangements are consistent with an employment relationship, but on the other hand there were no arrangements in place for sick pay or holiday pay as one might expect in an employment contract and she was in fact genuinely free to provide substitutes, who she paid herself. She did that on a number of occasions. That has all the hallmarks of a person with self-employed status, not subject to a contract to provide service personally. Her replacements, whom she chose, were not subject to approval by Mr Baines or Miss Baines. Her day to day work in the home of Mr and Mrs Baines was not controlled by Mr Baines or Miss Rosemary Baines.
51. The nature of the work that Mrs Robinson was doing did not lend itself easily to the concept of an employment relationship. It was the provision of personal care to family, an arrangement between sister and brother in law, albeit an arrangement which was the subject of a contract and did entail payment.
52. My conclusion having regard to all of these facts in the round, (there are factors that point both ways) is that this was not an employment relationship. Mrs Robinson was not an employee.
53. In summary Mrs Robinson, your claim has failed and that is for three reasons:
  - 53.1. Firstly, because you were not an employee of Mr and Mrs Baines or Mr Baines;
  - 53.2. Secondly, because your contract with Mr Baines ceased, dissolved,

upon his death; and

- 53.3. Thirdly, your claim was issued out of time, it was reasonably practicable to have been issued in time and so the Tribunal would not have had jurisdiction to consider your claim anyway.

**Approved by:**

Employment Judge M Warren

Date: 25 July 2025

Judgment sent to the parties on

6 August 2025

For the Tribunal office

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