



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8001727/2024 (V)**

**Held on 28 April 2025**

**Employment Judge N M Hosie**

**Mr W Zima**

**Claimant  
In Person**

**Dionard Guest House Limited**

**Respondent  
Represented by,  
Mr E Stafford,  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that:-

1. For the reasons given orally at the Hearing, the respondent's application to strike-out the claim, in terms of Rule 38(1)(b) of The Employment Tribunal Procedure Rules 2024, is refused;
2. The claimant was not, "in employment under a contract of employment, a contract of apprenticeship or a contract personally to do work", in terms of s.83 (2)(a) of the Equality Act 2010;
3. The claimant was not an employee of the respondent, in terms of s.230(1) of the Employment Rights Act 1996;

**E.T. Z4 (WR)**

4. The claimant was not a worker, in terms of s.230(3) of the Employment Rights Act 1996; and
5. The claim is dismissed for want of jurisdiction.

## **REASONS**

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### **Introduction**

1. The claimant submitted a claim form on 22 October 2024 in which he intimated complaints of disability discrimination, “whistleblowing”, for notice pay, holiday pay and unpaid wages. The claim was denied in its entirety by the respondent. In addition, the respondent’s solicitor intimated a number of preliminary matters and this case called before me by way a Preliminary Hearing to consider:-
  - An application by the respondent’s solicitor to strike-out the claim
  - Employment status
  - Disability status.

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### **The evidence**

2. I heard evidence on behalf of the respondent Company from:-
  - Ms Gail Campbell, the owner of the Dionard Guest House and sole Director of the respondent Company
  - Ms Jacqueline Keulemans, who works at the Guest House, on a self-employed basis, carrying out a variety of tasks

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I then heard evidence from the claimant, Mr Willard Zima.

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### **Observations on the evidence**

3. Ms Campbell gave her evidence in an open, measured and convincing manner, consistent with the documentary productions. She presented as credible and reliable. Her evidence was consistent with, and corroborated to an extent, by that of Ms Keulemans who also presented as credible and reliable. As far as the issue of the claimant’s employment status was

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concerned (using the term “employment” in a neutral sense), I preferred the evidence of Ms Campbell to that of the claimant.

4. The respondent’s solicitor submitted a bundle of documents (“R”). The claimant also submitted a bundle of documents (“C”).

### The strike-out application

5. The respondent’s solicitor submitted that the claim should be struck out, in terms of Rule 38(1)(b) of The Employment Tribunal Procedure Rules 2024. He maintained that the manner in which the claimant had conducted the proceedings was unreasonable. I gave an oral Judgment at the Hearing to the effect that the application was refused. In short, I was persuaded that the claimant had conducted the case in an unreasonable manner, having regard, in particular, to the terms of the email he sent to Ms Campbell on 20 December 2024 (R.38-39). However, I was not satisfied, on the evidence, that this made a fair trial impossible (see *Blockbuster Entertainment Ltd v. James* [2006] IRLR).

### Employment Status

#### The facts

6. Having heard the evidence and considered the documentary productions, I was able to make the following findings in fact, relevant to the issue of the claimant’s employment status. The respondent’s business is that of a small Guest House operating in Inverness. The Guest House is owned and operated by Ms Campbell. She has two employees, “Emma” and “Nicola”. As employees, they are subject to PAYE and they pay Income Tax and National Insurance. The payroll is administered by Ms Campbell’s Accountant.

- 5 7. As I recorded above, Ms Keulemans also works at the Guest House. However, she is self-employed and as such she submits invoices for her work and pays her own Income Tax and National Insurance. Ms Campbell's friends also help out at the Guest House from time to time on a voluntary, irregular basis.
- 10 8. The claimant moved to the Guest House on 1 January 2024 into a double room. He entered into a Tenancy Agreement (R.360-365). His rent was £160 per week.
- 15 9. By and large, I was satisfied that the averments by way of "Background" in the respondent's paper apart to the ET3 Response Form were well-founded. They gave an accurate account of the relationship between the claimant and Ms Campbell which at first was excellent but then deteriorated, markedly (P.31-34, paras. 13-43).
- 20 10. The claimant advised Ms Campbell that he had moved to Inverness following his divorce to concentrate on writing books based on mythology. The claimant is also an artist.
- 25 11. The claimant paid his rent for January. In February he asked the respondent if he could defer the rental payments. He told her that he was in receipt of housing benefit and incapacity benefit. He also had to pay for medical cannabis.
- 30 12. By this time, the claimant and Ms Campbell had become friendly and the claimant had been of assistance at the Guest House. He told Ms Campbell that he had a skill as a carpenter and he offered to make shelving. He also supported Ms Campbell at a food bank where she volunteers.
13. I accepted Ms Campbell's evidence that she "felt sorry for him". As he was having financial difficulties, was "good company" and they had become good friends, she decided not to charge him rent and he stayed on. He did help out

at the Guest House. However, she did not ask him to do so. He offered to do various tasks. As Ms Campbell put it, “she never made him do anything he didn’t want to do”. She supported him with his book writing and she drove him to Aberdeen on at least one occasion to get advice at the University about marketing his books. To enable the claimant to travel to Aberdeen in the future in this connection, Ms Campbell put the claimant on her car insurance. She did not do so to enable him to assist with the running of the Guest House.

14. As Ms Campbell put it, they became “great friends”. When the tourist season started on 1 April 2024 the claimant offered to assist further with the running of the Guest House and Ms Campbell agreed. He assisted in the dining room Monday to Friday, 7am to 10am, but he was under no obligation to do so. He also greeted guests on occasions. This afforded him the opportunity to promote his books.
15. The claimant was not paid wages. He was not given a contract of employment.
16. The claimant did not do any bookings and nor was he involved in the management of the Guest House. Ms Campbell continued to do all the shopping which on occasions the claimant helped to take in to the Guest House.
17. Each week Ms Campbell would prepare a rota which included the claimant (and her friends, on occasions), having checked first that the claimant was prepared to do the proposed work (R.384).
18. Around the start of the tourist season, in early April, as Ms Campbell was finding it awkward introducing the claimant to guests simply as “Bill” or “her friend”, she decided that it would sound more business like to introduce him as the “Assistant Manager”. However, I was satisfied, as the respondent’s

solicitor submitted that, *“the title was more ceremonial than that of any actual substance.”*

19. The claimant had some expertise in marketing and, as a “talented writer and  
5 artist”, he suggested to Ms Campbell that he could prepare a “Newsletter” for  
the Guest House and she agreed (P.372-383).
20. I accepted Ms Campbell’s evidence when she said this about the claimant:-  
10 *“He made a number of suggestions. He is very creative. I didn’t ask him to  
do these things. He suggested ideas which I let him do.”*
21. Such was their friendship, that Ms Campbell also paid the sum of £2,000 to  
enable the claimant to create a website to assist with the marketing of his  
books. She also loaned him money and took him out for meals which she  
15 paid for.
22. However, the relationship deteriorated to such an extent that the Police  
became involved and Ms Campbell was forced to require the claimant to  
leave. In mid-August 2024 she gave the claimant one month’s notice to  
20 vacate the premises. But the relationship deteriorated further and on 24  
August 2024 she gave the claimant one day to remove himself which he did,  
escorted by the police at Ms Campbell’s behest.

### Respondent’s submissions

23. The following is a brief summary of the submissions by the respondent’s  
25 solicitor. With reference to ***Autoclenz Ltd v. Belcher & Others*** [2011] ICR  
117, he submitted that as there was “no mutuality of obligations” the claimant  
was not an employee, in terms of s.230 of the Employment Rights Act 1996.

24. In further support of his submission that there was no mutuality of obligations, the respondent's solicitor also referred to ***Nethermere (St. Neots) Ltd v. Gardiner & Another*** [1984] ICR 612.
- 5 25. There was no obligation on the claimant to work for the respondent, no obligation on the respondent to pay him for that work and none was ever requested or paid.
- 10 26. The claimant could "suit himself". There was no expectation or requirement for him to work.
- 15 27. So far as the issue of worker status was concerned, the respondent's solicitor submitted, with reference to ***Bullock v. Norfolk County Council*** UKEAT/0230/10/RN it was never the intention of Ms Campbell and the claimant to create a verbal contract and none was ever created.

### Claimant's submissions

- 20 28. The claimant also made oral submissions at the Hearing. I also considered his submissions in the documents he submitted (C. 1-9).
- 25 29. The following is a brief summary. He maintained that he had a verbal contract with Ms Campbell, constituted by "offer and acceptance". He considered that they had a "working relationship".
- 30 30. He claimed that Ms Campbell "used his reputation and artistic success" and that she was "excited to promote his books".
- 30 31. There was a mutual intention to create a working relationship which was real. He said that he provided his labour "on a bunch of levels" and that it started when he stopped paying rent.

32. Ms Campbell never told him that he was a “fake Assistant Manager”.

33. In support of his submissions he referred to ***Ready Mixed Concrete (Southeast) Ltd v. Minister of Pensions & National Insurance*** [1968] All ER433, QBD.

## Discussion and Conclusions

34. The Equality Act 2010 protects applicants for employment and those already in employment from discrimination. The definition of “employment” for these purposes is found in s.83(2):-

### ***“83. Interpretation and exceptions***

(1) *This section applies for the purposes of this Part.*

(2) *“Employment” means –*

(a) *employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.....”*

35. The inclusion of those who work under a contract “*personally to do work*” means that “*employment*” for the purposes of the Equality Act is a wider category than “*employee*” under s.230(1) of the Employment Rights Act 1996 which is in the following terms:-

### ***“230. Employers, workers etc.***

(1) *In this Act, ‘employee’ means an individual who has entered into or works under (or where the employmen*

*t had  
ceased,  
worked  
under a  
contract of  
employmen  
t).*

*(2) In this Act,  
'contract of  
employmen  
t' means a  
contract of  
service or  
apprentices  
hip,  
whether  
express or  
implied, and  
(if it is  
express)  
whether  
oral or in  
writing."*

25 36. The definition in s.230 does not provide much in the way of assistance in determining whether or not in any particular case the individual bringing the complaint is an employee or not. Determination of a person's status, therefore, is a question of fact for the Tribunal, to be ascertained by examining the particular circumstances of each case.

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37. However, to satisfy that definition there must in the first place be a contract of some kind – i.e. an intention to create legal obligations. I am satisfied that

that was not the case here. It was never the intention of Ms Campbell and the claimant in the present case to create a relationship of employment, to create legal obligations (***Atholl House Productions v. HMRC*** [2022] EWCA Civ 501). The claimant only helped out at the Guest House on a voluntary basis.

38. The claimant was not an employee, therefore, as defined in s.230.

39. Further, and in any event, with reference to the “multiple test” in ***Ready Mixed Concrete***, there were a number of factors inconsistent with the claimant being an employee. Not only did he not have a written contract of employment and nor was there a verbal one, he was not paid wages, in consideration of his assistance; he did not pay Income Tax or National Insurance; he did not receive paid holidays.

40. There was no “mutuality of obligation” (which Lord Irvine of Lairg said was the “*irreducible minimum*” necessary to create a contract of employment in ***Carmichael & Another v. National Power Plc*** [2000] IRLR 43HL). I accepted Ms Campbell’s evidence that the claimant was not required to work at the Guest House if he did not wish to do so and she was under no obligation to pay him wages.

41. Nor did Ms Campbell exercise control over the claimant. He was free to offer to assist at the Guest House, as and when he pleased.

42. Such working arrangements as there were between the claimant and Ms Campbell were because they were good friends and it suited both of them. It suited Ms Campbell as she had someone who could do DIY and help out at the Guest House. It suited the claimant as he was able to promote his books with the guests. He was not an employee, in terms of s.230(1). He was not “in employment” under a contract of employment, in terms of s.83.

43. But was the claimant contracted “personally to do work”?

44. The inclusion of those who work under a contract “personally to do work”, in s.83(2)(a) of the 2010 Act means that “employment” for the purposes of the 2010 Act is a wider category than “employee” under s.230(1) of the 1996 Act. However, the case law suggests that, while the two provisions may be worded differently, there is little, if any, difference in substance between a “worker” under 1996 Act and a person who is in “employment” under the 2010 Act. A worker is defined in s.230(3) of the 1996 Act as follows:-

**“230. Employees, workers etc.**

.....

(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  
 employmen  
 t 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, where the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

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

45. The claimant did not “undertake” to work for the respondent in the sense that he did not guarantee to do so. He volunteered to do work at the Guest House because he possessed certain skills, because Ms Campbell, the owner, was his friend and because it afforded him an opportunity to promote his books with the guests.
46. In **Uber BV & Others v. Aslam & Others** [2021] ICR 657 the Supreme Court held that when determining “worker” status the correct approach is to consider the purpose of the legislation which is to give protection to individuals who are in a subordinate and dependent position in relation to a person who exercises control over their work. Ms Campbell did not exercise control over the claimant’s work. There was no more than a loose, informal, arrangement between friends which was mutually beneficial. Consistent with that arrangement was that the claimant was not paid a wage. He did not pay Income Tax or National Insurance. He was not obliged to work if he chose not to do so.
47. The claimant was not working for the respondent under a contract of employment, within the meaning of the statutory definition. He was not a “worker”.
48. The claimant was neither an employee nor a worker; he was not “in employment under a contract of employment or a contract personally to do work”.
49. This means that the Tribunal does not have jurisdiction to consider his discrimination complaints or any of his other complaints. His claim, therefore, falls to be dismissed.
50. Having reached this decision, it is unnecessary to address the remaining issue of the claimant’s disability status.

**Employment Judge: N M Hosie**

**Date of Judgment: 5 May 2025**

**Date Sent to Parties: 6 May 2025**

