EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001971/2024 (V)

Held on 28 May 2025

Employment Judge J M Hendry

Mr C Milne	**Claimant** **In Person**
WBC Media CIC	**Respondent** **Represented by,** **Mr A Farooq,** **Solicitor** **Instructed by,** **J Forrest,** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds as follows:

1. **That the claimant was a worker with the respondent company from May 2024 until August 2024.**
2. **That the claim for unfair dismissal should be dismissed and the remaining claims listed for a final hearing.**

REASONS

1. The claimant in his ET1 seeks findings that he was sexually discriminated against whilst working for the respondent company and that he suffered a detriment following a whistleblowing disclosure.

2. The respondent's position was that they did not accept the Tribunal had jurisdiction to hear these claims as the claimant was not an employee but a self-employed contractor.

3. The case proceeded to a Case Management Hearing on 3 February 2025 before Judge M Robison. After hearing parties she ordered that the case proceed to a Preliminary Hearing to determine the question of employment status. The claimant had accepted that he was a self-employed contractor and it was recorded in the Note that he accepted that he was not an employee.

4. The respondent's agents lodged a Bundle of Documents prior to the Preliminary Hearing. As the onus was on the claimant to demonstrate that the Tribunal had jurisdiction he gave evidence first. He also called Graham Barron, a Director of the respondent company as a witness. The respondents called Mrs Janice Forrest, Director and Mrs Karen Day as witnesses.

5. The issue for the Tribunal was whether or not the claimant had worker status both under the Employment Rights Act and the Equality Act 2010.

6. The Tribunal found the following facts established or agreed.

The facts

7. The claimant has over 20 years' experience in local radio. He has, during this time filled a number of roles including presenter, organising daily programmes/schedule and commercial and advertising roles. He has worked with a number of local radio stations in Scotland. Latterly he traded as "Simply Events" providing bouncy castles and providing other equipment for hire for events.

8. In 2024 the respondent company was set up to start a new local radio station in Peterhead called “Waves”. Mr Graham Barron was one of the Directors and Shareholders. He knew the claimant and his background and had worked with him in local radio. The company agreed to approach the claimant to seek his expertise in assisting with the setting up of the radio station.

9. The first task the claimant was asked to deal with related to making short radio advertisements for clients. It was envisaged that there would be other specialised work at the station that he could assist with. This also included filling in for presenters if necessary. The claimant would often carry out work at the radio station. However, he would also work at home using digital access to the station.

10. The claimant met Mr Barron, who had been authorised by the Board of Directors to approach the claimant in May 2024. Initially the claimant was offered work at a day rate of £40 per day for 5 hours work. He rejected this as being below the minimum wage and a short time later an alternative offer was put to him of £50 per day for 5 hours and for 20 hours work per week.

11. As the claimant was self-employed it was agreed that he would issue invoices to the company. He did so in the name of “Craig Milne” (JB60-65).

12. The respondent had a Station Manager, Gavin Harper. It was agreed that the claimant would be given the role of Programme Director. He would be involved in setting up the radio programmes. This was known as “Clocks Setup” whereby music was arranged to play during a particular hour of programming and spaces left for news, weather and advertisements. The claimant was asked to continue preparing advertisements for clients at the rate of £20 per advertisement.

13. There was a considerable amount of work involved in setting up the radio station. The claimant was busy. The arrangement between the claimant and the respondent’s Directors was based on mutual trust. The claimant carried

out work that was necessary and did not get pre-approval for carrying out such work. He would work flexibly around his own business and childcare. He arranged holidays after consultation with the General Manager. He was not subject to the staff Disciplinary Policy. He was responsible for paying his own tax and national insurance.

14. On occasions the claimant took part in outside broadcasts. On one occasion when broadcasting from a Circus he was asked to wear a T-shirt with the respondent's "Waves" logo on it. This he did. There was no requirement for the claimant to wear this on other occasions when carrying out work.

15. The claimant would often work at different hours when convenient to him and accordingly he was given a key to the radio station.

16. In July the respondents received an invoice from the claimant. Money was tight and they were concerned at the cost of the claimant's services.

17. They had a meeting on 19 August and it was agreed that the claimant should be approached and his contract altered and that work would have to be pre-approved before it was carried out. However, the claimant would still remain on 20 hours per week.

18. A meeting was held with the claimant on 21 August. Mrs Forrest, Director of the Company was present as was Bob Forrest, her husband, a Director and Gavin Harper, the Station Manager.

19. Mrs Forrest made notes for herself following the meeting (JB81-82). These notes were not circulated or approved by other participants. She wrote:

"*During June and July Craig had been contracted for 20 hours per week to assist with Clocks and categorising music library. As that work was now at a manageable stage, the initial contract terms were no longer appropriate.*

Janice emphasised that co still wanted Craig to carry out work for the station. Craig confirmed that he will also want to be involved as he genuinely wanted co to succeed.

Janice outlined new terms to be offered. These would be as follows –
Any contract work offered would be fully specified, costed and agreed to both parties prior to the work being undertaken. This would avoid the previous situation where the invoiced amount succeeded the agreed terms. Mr Milne accepted these proposals."

Witnesses

20. I found the claimant to be a generally credible and reliable witness. He gave his evidence carefully and with some thought. However relations with the station and it's management had soured and he clearly felt aggrieved at the situation that had arisen at the radio station.
21. Mr Barron gave clear and honest evidence. He was credible and reliable.
22. Mrs Forrest was also a credible and reliable witness. She conceded that her perception of the claimant was that he was charging too much in his invoices. She was not aware of the additional work he was carrying out or was expected to carry out. Mrs Day was wholly credible and reliable. She showed no antipathy towards the claimant e and I found her a straight-forward and honest witness.

Submissions

23. The respondent's position was that the claimant had admitted that he was a self-employed contractor. He had worked flexibly. He had to pay his own national insurance and tax. He could take holidays when he wanted to. There was some suggestion that he had refused to carry out some work and had not been disciplined for it. All these factors in Mr Faroq's submissions pointed to the fact that the claimant was a self-employed contractor.

24. The claimant indicated that in his view he was more akin to an employee. He believed that he was a worker. He had been asked to use his expertise for work personally for the respondent Company.

25. Mr Farooq helpfully provided the Tribunal with written submissions and referred both to section 230 of the Employment Rights Act (ERA) and also section 83 to the Equality Act and the definitions contained therein of worker. He considered the various factors appropriate to both sections concluding that the claimant was not a worker. He made reference to mutuality of obligation and indicated that both parties accepted that the claimant was able to work up to a maximum of 20 hours per week. This was the respondent's budget with the hours varying depending on the work required and he would carry out work in excess of 20 hours. Mr Faroq submitted that there was no real control over the claimant and the way he carried out his work. The overall picture was that he was not a worker and he was not obliged to wear a uniform. He was not obliged to carry out work.

Discussion and Decision

26. This is a complex area of law that is difficult for both lawyers and non-lawyers to navigate. The fact that someone has the tax status of being regarded as self-employed is not definitive. Section 230(3) of the ERA defines a worker as an individual who has entered into or works under:

- A contract of employment or
- Any other contract whether express or implied and (if 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. If status is not by virtue of the contract of that of a client or customer or any profession or business undertaking carried out by the individual.

27. The second definition is that of a “Limb B” worker. The Tribunal will also have to consider whether there is an extended definition of worker contained in section 230(3) of the ERA relating to whistleblowing cases. There is also a different definition of a worker given in the Equality Act 2010. It is arguable that in certain circumstances the definition is wider than the “worker” category in section 230(3)(b) of the ERA.

28. It is clear that there was a contractual relationship between the parties. It is unfortunate that it was not put in writing. There was some dispute as to whether or not the claimant worked a minimum 20 hours per week (the way in which he approached the matter whether it was up to 20 hours per week). It was clear that in the period the claimant worked with the respondent there was more work for him to do than 20 hours per week and he was asked or allowed to work in excess of 20 hours per week. Determining workers’ status a Tribunal is often faced with a situation where an individual worker enters into a contract to provide personal services to an employer but through a separate company. It is not the situation here. The claimant had a trading entity known as “Simply Events”. It was also clear that he wasn’t approached because he ran “Simply Events”. The respondents had no need of bouncy castles or other equipment. He was approached specifically in relation to his expertise in local radio.

29. In order to fall within the definition of worker in section 230(3)(b) of the ERA an individual must undertake to do or perform personally any work or services for another party to the contract. It was clear that the obligation of personal performance exists in this case. Both Mr Barron and Mrs Day indicated that the claimant had been approached because of his expertise. Indeed, Mrs Day referred to the claimant at one point as a “Consultant”. The contract includes an obligation of a personal performance of the matter of instruction if the contract is written or, an examination of the facts as here. There is no suggestion that the claimant could substitute anyone for his obligations. He was known through Mr Barron as someone with long experience and

expertise in local radio. I therefore do not need to consider substitution in this case.

30. The claimant raised the question that he wore a "uniform" as he described it on occasions. This is a branded T-shirt. The respondent's position was that there was no obligation for him to wear it regularly but it was issued to him for outside broadcasts to indicate that he was part of the "Waves contingent". I accepted this evidence and accordingly placed no weight on it. The case of ***Bates Van Winkelhoff Clyde & Co LLP & Another (public concern at work intervening)*** [2014] ICR 730 SC distinguishes between two kinds of self-employed people. The first are those who carry on a profession or business on their own account and who enter into contracts with clients or customers to provide work or services for them. There are those who are also self-employed but who provide their services as part of a profession or business carried out by someone else. The latter are Limb B workers. The case of ***H? Medical Group Ltd v. Westwood*** [2013] ICR 415 CA insisted in consideration of the phrase "*client or customer*" as the exception. In that case HMG Ltd recruited W to work as a hair restoration surgeon in terms which required him to use HMG Ltd's equipment which prevented him from offering the same service to anyone else. He was not required to carry out the work and nor was HMG Ltd required to provide him with any. He continued to work in his own surgery and also to undertake work for another private client. When he worked for HMG Ltd he was paid a percentage of the fee he received. In his written contract it was said that he was self-employed and that he had to submit monthly invoices. In August his contract was summarily terminated. He sought to bring a claim. The Employment Tribunal held that he was a worker under section 230(3)(b) ERA on the basis that he was engaged to perform work personally for HMG Ltd which in effect introduced clients to him for the more HMG Ltd was not a client or customer of any profession or business undertaking carried on by him. It now appears that there is an appeal to the Court of Appeal who indicated that the client or customer element is an additional and necessary ingredient of the statutory

question so it is not sufficient that someone is genuinely self-employed or carries on the business undertaking.

31. In these circumstances it appears clear to me that when working for the respondents during the period May to August the claimant was a worker.

29 July 2025

Date sent to parties