



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH by CVP

BEFORE: EMPLOYMENT JUDGE MORTON

BETWEEN:

Mr J Thupparamban Jose

Claimant

AND

RVB Transcendence Ltd

Respondent

ON: 1 May 2025

Appearances:

For the Claimant: In person

For the Respondent: Ms Veimou, litigation consultant

Written reasons provided at the request of the respondent

1. By a claim form presented on 26 June 2024 the Claimant brought a claim of unlawful deduction from wages/breach of contract against the respondent. ACAS was first contacted on 8 June 2024 and the certificate was issued on 12 June 2024.
2. The hearing took place by CVP and I was satisfied that everyone present could see and hear clearly. At the hearing I heard evidence from the claimant and from his witness Benny Jose. The respondent's witnesses were Visha Agarwal and Prakash Beeharry.
3. I was provided with a bundle of documents consisting of 647 pages and any page references in these reasons are references to page numbers in that bundle.

The issue for the hearing

4. The claimant had brought money claims only, and sought unpaid wages and holiday pay. In order to determine his entitlement to payments from the respondent I needed to determine whether the claimant had a status that entitled him to be paid by the respondent and if so, the terms of his contract. As the claimant asserted that he had been employed by the respondent and had a contract of employment, I focused on the question of whether he was an employee.
5. There was also an application for specific disclosure made by the respondent outstanding at the start of the hearing. The application had been made in the following terms:

The Respondent is applying for specific disclosure under rules 31 and 33 from the Claimant of the following documents;

- 1. Email in which he says the alleged employment contract which he has provided as evidenced was sent to him, as well as the email showing the Claimant returning it with his signature**
- 2. Metadata of the document which show the date it was created and the date it was last modified**
- 3. Metadata of the document containing the duty rotas showing when it was created and modified**
- 4. Metadata of the document pertaining to be the Claimant's resignation letter.**

We make this application because it is the Respondent's position that the documents mentioned in points (1) – (3) are forged. If the Claimant did indeed sign the contract at the time he should have access to the relevant documents. The Claimant used his personal email address in communications with Mr. Benny Jose (the person who is said to have sent him the contract) so he should be able to find this quite easily. These are all documents that are solely in the possession of the Claimant.

We submit that this application is in accordance with the overriding objective as it will help the Tribunal decide a central issue in the case, whether the employment contract that the Claimant has provided is genuine, as well as the two other documents which refer to him as 'Deputy Manager' a title which the Respondent disputes was ever given to him.

6. The claimant had not complied by the start of the hearing and did not do so at any point. I drew inferences from that failure about the credibility of the claimant's claims, as set out further below.

The legal framework

7. An employee is defined under s 230 Employment Rights Act 1996 as follows:

230 Employees, workers etc.

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

.....

(4) In this Act "employer", in relation to an employee or a worker, means the person by

whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act “employment”—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment...

8. The question of whether a contract of employment exists has also been explored extensively in case law. The usual starting point is the decision of *Ready Mixed Concrete (South East) Ltd v the Minister of Pensions and National Insurance* [1968] 2 QB 497. This case determined that the key tests for the existence of a contract of service were that:
 - a. An agreement exists to provide the servant's own work or skill in the performance of service for the master ("personal service") in return for a wage or remuneration ("wage/work bargain").
 - b. In the performance of that service, the servant agreed expressly or impliedly to be subject to a sufficient degree of control from another to make that other their master ("control").
 - c. The other provisions of the contract are consistent with a contract of service ("other factors").
9. In the case of *Autoclenz Ltd v Belcher and others* [2011] IRLR 820 the Supreme Court reiterated that an employment tribunal must, in appropriate cases, take into account the relative bargaining power of an employer and an employee or worker and ensure that it considers the true nature of the contract that is actually being performed as well as any written terms.

Findings of fact

10. I have made only such findings of fact as are necessary to decide the preliminary question of the claimant's employment status. I do so on a balance of probabilities on the basis of the oral and written evidence presented to me at the hearing.
11. I find as a fact that the claimant and his witness Benny Jose have had a long standing and multifaceted business relationship involving several corporate entities, including Wegoodcare and Thornbury Care. Mr Beeharry's unchallenged evidence was that he knew the claimant as a supplier of agency staff to Fitzroy Lodge which was owned by a partnership that included himself. The claimant had supplied staff through 'Wegoodcare' and Thornbury Care Agency along with his two partners one of whom was Benny Jose. The claimant then approached Mr Beeharry for advice about diversifying his business activities beyond the supply of care agency staff.
12. Advanced Care Solutions ("ACS") was incorporated in May 2022 with three shareholder/directors including the claimant and Benny Jose and with the object of supplying care staff and potentially expanding into other aspects of care home management. The three directors were jointly interested in developing the capacity of ACS to enter the market in managing care home contracts. An

opportunity opened up for them to do this by means of the development of expertise in a small care home, Grange House that was owned and run by the respondent. Mr Beeharry was the Nominated Individual and agreed to provide them with guidance. He arranged that ACS would shadow the management at Grange House, initially on a wholly voluntary basis to enable it to develop the expertise to bid for care home management contracts. Mr Agarwal confirmed that idea was to build ACS' (including its shareholders') experience within the care sector which they could then use to leverage other contracts within that sector (pages 214 – 215 and 298 – 300). This was to be done under the respondent's supervision until the shareholders of the respondent were satisfied with ACS' performance and ability to start operating independently.

13. I find as a fact that there was an agreement that there would be no payments involved in the arrangement for the initial period of shadowing and learning, but that Benny Jose was to become the registered manager with effect from April 2023, when he acquired CQC certification and he would receive a manager's salary with effect from October 2023 (379). I make no findings as to the lawfulness of that arrangement particularly as regards pay, as that was not an issue I was required to determine. However, I did weigh up in arriving at my decision in this case, the way that the respondent had engaged Benny Jose. Having heard all of the evidence I was satisfied that different arrangements were adopted as regards the claimant. He was to provide support on the staffing side at Grange House through ACS, with ACS operating as a recruitment agency for care staff required within the home. There were numerous invoices in the bundle confirming that ACS was supplying staff on a commercial basis throughout the relevant period from May 2023 to March 2024 and numerous items of correspondence between the respondent and ACS indicating that throughout the relationship that prevailed was a business-to-business relationship. The claimant's role at Grange House was to use his own business to recruit the staff the home needed to operate. The fact that he would be learning about the operation of a care home in the process was an ancillary part of the arrangement, that would serve ACS's longer term ambitions. I find in particular that all of the engagement of the claimant with the respondent was through the medium of ACS and involved no direct contractual relationship between them. The fact that the arrangement was in essence a business-to-business arrangement was also indicated by emails such as the one at page 458, which record the ways in which Mr Beeharry was trying to support the development of ACS as a business.
14. The claimant agreed in cross examination that he had begun working without expectation of recompense in March 2023, helping ad hoc with recruitment and administration as the company had what he described as "some struggles". The respondent confirmed that he undertook payroll administration, collation of time sheets and payroll queries, but that he did so under the auspices of his own company, ACS, which I find as a fact to have been the case. There were never any discussions about employing the claimant directly.
15. The claimant said that once Benny Jose became manager in April 2023, he had informed the respondent that he was going to appoint the claimant as deputy manager, and then interviewed and appointed the claimant to the role. The respondent disputed this and I accepted the respondent's version of the facts. I

accepted Mr Agrawal's evidence that Benny Jose did not in any event have authority to recruit the claimant as a deputy manager and no authority was sought from the respondent's directors. Authorisation was required for recruitment decisions and had been sought by the claimant and Benny Jose in respect of other appointments they made during the relevant period. The respondent would not in any event have appointed the claimant as a deputy director, firstly because Grange House was too small to need one (it had a capacity of 17 residents and was never completely occupied), and secondly because the claimant was extensively committed to other projects. I find as a fact that there was no recruitment of the claimant as a deputy manager – that was a fiction created in order to support a claim for unpaid wages.

16. I also accepted Mr Beeharry's evidence that the claimant never raised any questions about payment for his own contribution to Grange House, when he could easily have done so. I find that this was because at the time the claimant had no expectation of being paid other than by his own businesses, notably ACS, which was supplying staff into Grange House and invoicing for doing so.

17. I found the claimant's and Benny Jose's evidence about what happened to be unreliable and unsubstantiated by documentary evidence. For example:

- a. The claimant maintained that he had a deputy manager email address, but there was no evidence of that – the evidence clearly suggested that he did not and that he operated largely from ACS email and occasionally a personal email address;
- b. The claimant maintained that the draft lease that began at page 134 was fabricated, but it was clear that this was a document on which someone had written comments about the terms suggesting that the reality was that this was a document that had been circulated between the respondent and directors of ACS, the prospective tenant;
- c. Benny Jose had produced a witness statement that did not address or confirm any of the claimant's claims about the facts and circumstances of his claim, and made no reference at all to a contract being issued to the claimant, or any job interview;
- d. There was no evidence that the claimant had made any written complaints about lack of payments during the period that he said he was employed (May 2023 to March 2024) but he was during that period sending reminders by WhatsApp about unpaid invoices due to ACS (page 100). There were copies of invoices dated, for example March 2024, in the bundle (page 538);
- e. The claimant produced documents that he told the tribunal were timesheets (page 217), but these were in a different format from those provided by the respondent (page 195). There was no credible explanation for this. One such timesheet (page 236) records the claimant as having been at work, when he was in fact in India. On page 116 he states in a WhatsApp message that he is in Abu Dhabi, whilst the document at page 251 that purports to be a rota indicates that the claimant was at work that day. His evidence in cross examination about this was wholly unconvincing.
- f. The purported issuing of a contract by Mr Jose to the claimant was

without the authority of the respondent. Hence even if the contract had been produced at the relevant time (May 2023) and not created at a later date (which is the respondent's case) Mr Jose's lack of authority to enter into it invalidates it and renders it ineffective. There was no evidence of any recruitment process beyond the issuing of the contract. There was no evidence that any authority had been sought from the Respondent – the evidence all pointed the other way.

- g. I considered whether the purported employment contract had in fact been produced with the intention of misleading the tribunal and hesitated before reaching a decision on that, but in the end I drew an inference from the claimant's failure despite repeated explicit requests to produce the metadata relating to the agreement or even the metadata relating to the scan he produced at the preliminary hearing in this claim. I conclude that on a balance of probabilities this document was intentionally created in order to support the claimant's case.
- h. I was equally unconvinced that the rotas produced by the claimant bore any real relationship to the truth of his working arrangements. In relation to those the discrepancies between the dates he said that he had been working and contemporaneous documents showing that on at least two occasions he was out of the country when he said he was working, led me to conclude that on a balance of probabilities those documents had also been fabricated with the intention of misleading both the respondent and the tribunal.
- i. Aside from these rotas there was very limited evidence of what the claimant was actually doing day today for the respondent apart from providing staff into the home via his own business, ACS and occasional pieces of administrative work also conducted via ACS.
- j. Finally, it is striking that the claimant did not raise the issue of his unpaid salary at any time during the course of the period for which he says he was unpaid. In my judgment the claimant never did expect to be paid, but when it became clear that the business-to-business arrangement was not working out as expected it seems likely that he decided he would try to recoup some funds from the respondent to compensate for the lost business opportunity.

18. I find that the respondent's plan had been for the claimant and Benny Jose to work with the assistance of Mr Beeharry, for Mr Benny Jose to become registered manager and for ACS to work towards applying to become the registered service provider in place of the respondent in due course. An application was made to the CQC in September 2023. This plan however never came to fruition as ACS failed to achieve the required level of competence across the areas of expertise required for the respondent to continue to support its bid. The relationship between the parties broke down in March 2024 when ACS decided to terminate the arrangement. The letter at page 545, setting out the reasons for the termination was clearly written on behalf of ACS and was not an individual resignation letter from the claimant and made no reference to unpaid wages or salary, further reinforcing the points I have listed that undermined the unreliability of the claimant's case.

Conclusion

19. The issue I had to determine was whether in the context of the arrangement the claimant was employed from May 2023 as a deputy manager at Grange House. The claimant comprehensively failed to convince me that that was the case. On a balance of probabilities, the oral and written evidence showed that he continued to be primarily concerned with the operation of his other businesses and that his involvement with the day to day running of Grange House was intermittent and limited and conducted through his own limited company, ACS, which was operating at arm's length from the respondent. I find that it was not the intention of the arrangement that the claimant should be employed as a deputy manager or indeed employed at all. The quid pro quo for the time and effort that he expended (such as it was) was that his own business would gain access to new business opportunities. There was nothing in the evidence at all that persuaded me that the relationship between the claimant and the respondent was one of employer and employee – there was no relationship of subordination, there was no control, there was no evidence of any mutuality of obligation in the sense of the claimant providing services in exchange for remuneration and overall the characteristics of the arrangement were incompatible with there being a contract of employment at all.
20. I bore in mind the guidance from the case of Autoclenz Ltd v Belcher and others [2011] IRLR 820 and addressed my mind to the possibility that the arrangement described by the respondent in the documents was not the real relationship between the parties, but I concluded that the case had no application given the facts as I have found them, the strength of the evidence supporting the respondent's case and the weakness of the claimant's evidence.

Decision

21. It is for the Claimant to prove that he was an employee at the relevant time. He has not satisfied me that he was.
22. I find on the basis of the evidence that I heard and read that this was a business-to-business arrangement between ACS and the respondent. It is clearly described in the Respondent's evidence, much of which was unchallenged by the claimant. I accept that the Claimant is unrepresented, and unfamiliar with court processes, but even allowing for that fact, the contrast between the cogency of the respondent's case and that of the claimant was striking.
23. Accordingly, any claims for payment under a contract of employment whether of salary or holiday pay, fail and are dismissed.

Employment Judge Morton
Date: 29 July 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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