



EMPLOYMENT TRIBUNALS

Claimant: Miss Z Alwan
Respondent: Resource Experience Ltd
Heard at: Reading (in public: Hybrid)
On: 13 October 2025
Before: Employment Judge Harrison

Appearances

For the claimant: In person
For the respondent: Ms M Diouf – Litigation Executive

JUDGMENT having been sent to the parties on 27 October 2025, written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure on 31 October 2025, and that request having been sent to me on 7 November 2025, the following reasons are provided:

REASONS

Introduction

1. This is a claim for unfair dismissal. The parties are not in agreement about the claimant's employment status. The claimant says she was an employee of the respondent, whereas the respondent says that she was a worker.
2. At a preliminary hearing (the **First PH**) held on 11 June 2025, this hearing was fixed to determine whether the claimant was an employee of the respondent, i.e., to decide on the claimant's employment status (the **Status Issue**). Case Management Orders (**CMOs**) were issued following the First PH. If the Status Issue were to be decided in the claimant's favour, further directions would be issued for a final hearing of the unfair dismissal claim.

Procedure, documents and evidence

3. This hearing was heard in person at Reading, save in respect of the respondent's witness, Gayle Mangan, who gave evidence through CVP. At the start of the hearing, I adjourned briefly to read the witness statements. Evidence about the Status Issue was given by the claimant on her own part, and for the respondent was given by Ms Mangan, Account Director with the respondent.
4. I was supplied with the bundle running to 159 pages together with some

additional documents from the claimant relating to her medical record. References in these reasons to page numbers are to page numbers in that bundle.

5. The claimant was acting without representation, so throughout the day I explained the processes being followed and points she should address.

Preliminary application

6. After I had adjourned to read the witness statements the claimant told me that she had an extra item for me to read. In summary the claimant had produced two short additional statements (the **Additional Evidence**) relating to her health. The issue of the claimant's health and 'possible discrimination' was referred to during the First PH, as recorded at paragraph 1 of the CMOs.
7. It became clear that the claimant wished to apply to amend her claim to add a claim for disability discrimination. I heard the claimant's application. I asked the claimant to explain what the discrimination claim was and said that I would hear from both her and the respondent, then apply a balancing test, which I explained, to assess whether to allow her application.
8. The claimant went on oath by affirmation and gave evidence in support of her application. Both parties made submissions. The claimant described her complaint as being subjected to name calling relating to her disability, and that discrimination by the respondent ended in 2021.
9. I considered the application, applying the balancing test. I took account of the fact that whilst the ET1 referred to 'possible discrimination and grievances' it did not on the face of it raise a disability discrimination claim. The claimant's case was discussed at the First PH when she did not apply to amend. The claimant was guided in the CMOs on what to do if she wished to amend. She did not act on this guidance. The application related to events in 2021 which were significantly out of time and no explanation was given for the delay. The claimant said allowing the amendment would help her to feel better. The respondent said it would face huge prejudice answering a claim relating to 2021, when more than 565 days had passed since the ET1 was submitted.
10. I refused the application to amend as recorded in my case management order dated 14 October 2025 and sent to the parties on 27 October.

The facts

11. The claimant worked for the respondent as a Tactical Field Marketing Services Operative. She signed a contract setting out the terms and conditions applicable to her work on 20 March 2021. The claimant suggested that the contract changed since she signed it, but there is no evidence to support this assertion. I find that the contract in the bundle (p41-56) is the one signed by the claimant.

12. The contract states that the claimant was a worker and not an employee. Under its terms, the engagement with the claimant was described as that of a worker. The claimant was paid for the time she worked and received holiday pay. She did not receive sick pay.
13. The respondent offered available work to its staff on an online portal. If the claimant wished to do work showing as available on the portal, she could accept this. She worked as and when she wanted to. The respondent did not assign work to the claimant without her agreement. Sometimes the claimant worked regularly, for example, for four out of seven days a week. At other times she did not work at all for periods of time. There was not a routine shift pattern and hours, locations, and days were not fixed or consistent. The claimant accepted that she did not have to be offered work and that she did not have to accept work that was advertised on the respondent's portal and that this was how the contract worked in practice.
14. The claimant did not wear a uniform, but she did receive information about what to do during her assignments and the standards expected when working.
15. During cross examination, the claimant accepted that she did not have to ask for time off, that she did not receive employee communications or attend staff meetings and that she did not have an employee email or business card.
16. The claimant was spoken to about her performance. This was not done under a disciplinary policy but by telephone calls or email. The company did not follow a disciplinary policy before terminating the claimant's contract.
17. The respondent's contract with the claimant dealt with the possibility of transferring work to a third party, paragraph 19.2, (p 56), such that personal service was not necessarily required. The claimant said she did not know that this was possible. Ms Mangan accepted that since 2007 she was unaware that this clause had ever been relied upon. I find as a fact that once the claimant used the portal to sign up for an assignment, that work could not be transferred by the claimant to be done by a third party.

The law

18. The terms "employee", "contract of employment" and "worker" are defined in section 230 of the 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.
- (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 employment 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, whereby 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.

19. Ms Diouf, for the respondent, referred me to the House of Lords case of **Carmichael and Another v National Power Plc [1999] 1 W.L.R. 2042**. In essence, she said that the tribunal must answer a status claim like this one by looking at three issues which are:

- Mutuality of obligation;
- Control; and
- Personal service.

20. I remind myself that In **Carmichael** Lord Irvine said in giving judgment that a lack of obligations on one party to provide work and on the other to accept work would result in '*an absence of that irreducible minimum of mutual obligation necessary to create a contract of service*'.

21. **Carmichael** refers back to the leading case of **Ready Mixed Concrete (SE) Ltd v Minister of Pensions and National Insurance [1968] 1 AER 433**, where MacKenna J defined a contract of service as follows:

A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.

Conclusions

22. I move on to express my conclusions based on considerations of the issues before me, the evidence I heard, the facts I have found, and the applicable law.

23. This is a case where a contract was in place. In that contract the claimant was labelled as a worker but this is not determinative of the question before me. The claimant asserts this was not the reality of her circumstances and that she was an employee. The respondent asserts the opposite.

24. In this case, I do not find that it was, in reality, possible for the claimant to replace herself in undertaking work. Personal service was required.

25. On the other hand, I do not find that in the way she undertook her assignments, there was sufficient control for this contract to meet the test to be an employment contract.

26. As regards the third limb of the test described in **Ready Mixed Concrete**, in this contract arrangements that typically suggest a contract of service were lacking. For example, the payment of sick pay, inclusion in employee events, or the reliance by the respondent on employment arrangements for managing performance or discipline. In addition, there was no obligation to provide or to do work: mutuality of obligation was entirely lacking. The claimant accepted both that the respondent made no commitment to provide work for her and that she did not have to accept work that was offered. Further, the claimant accepted that this was how the contract operated in practice. The provisions of this contract as to mutuality of obligation were not, therefore, consistent with this being an employment contract.
27. For these reasons, I find that the claimant was not an employee of the respondent.

Approved by:

Employment Judge Harrison

25 November 2025

JUDGMENT SENT TO THE PARTIES ON
26 November 2025

FOR THE TRIBUNAL OFFICE