



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Benjamin

**Respondent:** Soho Theatre Company Ltd

**Heard at:** London Central

**On:** 21<sup>st</sup> February 2025

**Before:** Employment Judge MJ Reed

## **Representation**

Claimant: In person

Respondent: Ms Rosie Knight, Counsel

# RESERVED JUDGMENT ON PRELIMINARY HEARING

1. Mr Benjamin was not an employee for the purposes of the Employment Rights Act 1996.
2. The claim for unfair dismissal is therefore not well founded and is dismissed.
3. Mr Benjamin was an employee for the purposes of the Equality Act 2010 and a worker within the meaning of section 230 of the Employment Rights Act 1996.
4. Mr Benjamin's contractual relationship with Soho Theatre Ltd was terminated by Soho Theatre, without notice, on 2<sup>nd</sup> October 2023.

# REASONS

## **Claims and issues**

1. The substantive issues to be resolved at this preliminary hearing were determined in Employment Judge Moxon's order of 4<sup>th</sup> October 2024 as follows:

- a. Whether the claims have been brought in time
  - b. The Claimant's employment status and dates
  - c. Disability and knowledge
2. By letter dated 6<sup>th</sup> December 2024, Soho Theatre Company accepted that, at all relevant times, Mr Benjamin had the conditions of complex post—traumatic stress disorder (CPTSD), anxiety and depression. It also accepted that these conditions meant that, at all relevant times, Mr Benjamin had a disability as defined by the Equality Act 2010.
  3. Soho Theatre Company also accepted that it had knowledge of Mr Benjamin's disability from 18<sup>th</sup> March 2024, but did not accept that it had such knowledge earlier than that date.
  4. I concluded that both the concessions made by Soho Theatre and the limited time available in the hearing were a material change of circumstances that meant it was appropriate to alter the previous decision to seek to determine the respondent's knowledge of disability prior to 18<sup>th</sup> March 2024. In so far as this remains relevant and in dispute it will be determined as part of the final merits hearing. This is because fairly resolving this point would require considering significant evidence that is now not otherwise relevant to the issues to be dealt with at the preliminary hearing and there was insufficient time to do so.
  5. Soho Theatre also conceded that, while he was engaged by the Theatre Mr Benjamin was both an employee for the purposes of the Equality Act (which is a wider definition than applies at common law and in relation to the Employment Rights Act 1996) and a worker for the purposes of the Employment Rights Act 1996.
  6. The dispute over time limits between the parties relates to the date on which Mr Benjamin's contract with Soho Theatre came to an end. ACAS conciliation began on the 20<sup>th</sup> March 2024 and ended on 1<sup>st</sup> May 2024. The claim form was presented on 9<sup>th</sup> June 2024. As noted in the list of issues, this means that any complaint about something that happened before 21<sup>st</sup> December 2023 may have been brought out of time.
  7. Soho Theatre argued that Mr Benjamin's contract was terminated at a meeting on 2<sup>nd</sup> October 2023. It would follow from this that any claim about that dismissal was brought out of time. Mr Benjamin, however, argued that he remained employed until 11<sup>th</sup> March 2024 when he was sent his P45.

### **Procedure, documents and evidence heard**

8. I was provided with three bundles of documents: a Preliminary Hearing Bundle (running to 223 pages); a Claimant's Supplementary Bundle (running to 504 pages) and a Claimant's Tertiary Bundle (running to 46 pages). References to page numbers in these reasons are to the Preliminary Hearing Bundle, unless otherwise indicated.
9. I heard evidence from Mr Benjamin on his own behalf and from Mr Stefan Andrews, Technical & Production Manager, on behalf of Soho Theatre.

10. Both parties made oral submissions in the course of the hearing and I was provided a written skeleton argument by Ms Knight. The parties' arguments are addressed as they arise in the course of these reasons.

### **Findings of fact**

11. The Tribunal considered the oral evidence and the documentary evidence to which it was referred. All findings of fact were made on the civil standard of proof. That means that they were reached on the basis that they are more likely to be true than not.
12. These written reasons are not intended to address every point of evidence or resolve every factual dispute between the parties. The Tribunal has made the factual findings necessary to resolve the legal disputes before it. Where findings have not been made, or are made in less detail than the evidence presented, that reflects the extent to which those areas were relevant to the issue and the conclusions reached.

### *Background*

13. Mr Benjamin worked at the Soho Theatre from 8<sup>th</sup> March 2022 as a casual technician.
14. The Soho Theatre is a theatre and comedy venue. It has three performance spaces. It has a technical team, led by Mr Andrews, which contains two groups of workers described as 'permanent technicians' and 'casual technicians'. Soho Theatre argued that the permanent technicians were employees, but that the casual technicians were not.
15. The work of this technical team can be divided into two categories. First, there is the work involved in a 'get in'; that is the work building sets, rigging lighting / sound and otherwise moving a production's equipment into a venue before opening night. Second, there is the technical work involved in a production when it was being performed.

### *The statement of particulars*

16. I was provided with a copy of Mr Benjamin's statement of particulars of terms and conditions of employment, page 156-162. It was signed by Mr Benjamin and on behalf of the Theatre.
17. The following elements of the statement are of particular relevance:
- a. It describes the relationship, at a number of points, as an employment contract. That is in the title of the document and the preamble states that the document forms 'the contract of employment' and indicates it sets out the terms on which Mr Benjamin will be employed. The term employment and its derivatives are used repeatedly throughout the document.
  - b. Mr Benjamin's role is described as 'casual technician'.

- c. Pay was on an hourly rate, to be paid fortnightly in arrears
- d. Pay may be deducted in the event of an unauthorised absence, which is defined as failing to turn up for work at the appropriate time.
- e. The hours of work are set out at clause 8 as follows:

8.1. Core hours for technical staff are 9:00am to 11:00pm, Monday to Saturday. Hours of work for each period of engagement will be subject to agreement between yourself and the company. The start and finish times may vary depending on the needs of the work and the company's business. The company will use its best endeavours to allocate you suitable work when it is available, but is under no obligation to provide you with any work or to provide you with any minimum number of hours in any day or week.

8.2 It is expected that you will be prepared to work evenings and weekends as required to fulfill your duties. Sundays may be worked in addition and do not currently form part of your core hours.

8.3 Your hours of work are variable and will be subject to agreement between you and the company. Due to the nature of the company's work, you are required to be flexible, and hours of work, including start and finish times, may vary depending on the needs of the work and the company's business.

- f. Mr Benjamin was entitled to paid holidays, on a pro rata basis based on the hours that he worked, in accordance with clause 9. He was required to give six weeks' notice in writing of his intention to take holiday.
- g. Clauses 12 and 13 provide for a disciplinary procedure and a grievance procedure.

### *Company Accounts*

- 18. Soho Theatre's Annual Report and Financial Statements for the financial year ending 31<sup>st</sup> March 2023 has been produced, page 464-500. That reports that the Theatre employed 88 people, page 491. Mr Benjamin's evidence, which was not disputed, was that this figure must include the casual technicians, since if it did not the figure would be much lower. He argues that this must mean that Soho Theatre regarded him as an employee.

### *Relationship in practice*

- 19. Mr Andrews gave evidence about how, in practice, work was assigned to casual technicians. Emails between Mr Andrews and Mr Benjamin relating to this were also produced, page 199-208.
- 20. Mr Andrews prepared rotas on rolling monthly basis. Shifts would be assigned to the six permanent technicians first, then remaining shifts would be offered to

the casual technicians by email. Mr Benjamin received those emails and would reply in order to accept shifts.

21. Mr Benjamin's evidence was that he carried out work for Soho Theatre consistently, working approximately 30 hours per week, but often significantly more. This evidence was not challenged in cross-examination and Mr Andrews accepted that it was broadly accurate. Both Mr Benjamin and Mr Andrews agreed that there were occasions when Mr Benjamin did not accept, but that he did work consistently and that he had always accepted at least some shifts in each fortnightly pay period. I therefore I accepted that Mr Benjamin worked consistently in the manner that he described.
22. Although Mr Benjamin accepted that he did turn down some of the shifts he was offered, he said that if he had consistently said that he would not accept any hours, he would have been told that he would be let go. He gave an example of a colleague who had accepted no work for a number of months and subsequently was no longer offered shifts.
23. When he was asked about this, Mr Andrews said that if a casual technician did not take shifts for a while, they would be contacted and asked if they wished to remain on the system. If they did not (or if they did not respond to the query) they would be removed from the system and sent a P45.
24. Mr Andrews said that there was significant difference in the level of work performed by casual technicians. Some, like Mr Benjamin, worked regularly every month. Some worked more rarely. Many technicians worked for other organisations while also taking shifts from Soho Theatre. It was also not uncommon for casual technicians to work elsewhere or to be absent for a period of up to six weeks on tour. He said that when this occurred he would generally have a conversation with the technician to understand their availability.
25. In his evidence, Mr Andrews said that he saw his role in offering work to the casual technicians as ensuring that there was a fair distribution of work between them, while taking into account their preferences. He said that there was an expectation that technicians would provide a reasonable level of availability, given that they were generally operating as freelance technicians. He said that, if someone was simply turning down shifts because they didn't want to come in, this would be annoying, but he would not have felt able to insist. He said that if this was happening consistently, he would want to have a conversation with that technician to understand why and might well have suggested that, since they didn't seem to wish to accept work at the theatre, it would be better to cancel the relationship
26. In addition to the general emails sent to all the casual technicians, it is apparent that on at least some occasions Mr Andrews made specific requests that Mr Benjamin work particular shifts. An example of this is the email correspondence on 16<sup>th</sup> August 2023, page 204. Mr Andrews asks 'Can I book in: ...' and lists a number of dates. Mr Benjamin replies 'All confirmed'. Mr Benjamin accepted in cross-examination about this exchange that he had no obligation to work on these specific dates.
27. Neither permanent nor casual technicians were provided with a uniform. Both groups, including Mr Benjamin, were provided with an ID badge. Neither group

was provided with individual tools. Permanent technicians were given a key to the theatre workshop, but both groups used the theatre's tools.

28. Mr Benjamin attended risk assessment training organised and paid for by Soho Theatre.

*End of relationship*

29. Mr Andrews' evidence was that, during the summer of 2023, he began to receive negative feedback about Mr Benjamin from some performers and other members of staff. He discussed this with his manager, Rebecca Moreland, the Interim Operations Director. They agreed they would no longer allocate shifts to Mr Benjamin.
30. I note, for the avoidance of any confusion, that I have not heard any evidence about the nature of this feedback and, at this stage, the Tribunal is not concerned about the merits either of Mr Benjamin's behaviour or Soho Theatre's response. At this stage, these events are only relevant to the issue of when Mr Benjamin's contract came to an end.
31. Mr Andrews met with Mr Benjamin on 2<sup>nd</sup> October 2023. Mr Benjamin, during his cross-examination, agreed that Mr Andrews told him that he had decided to cancel the shifts that Mr Benjamin had been booked to work in the future and that he would not be offered any further work.
32. No further shifts were offered to Mr Benjamin.
33. On 7<sup>th</sup> October 2023, Mr Benjamin emailed Ms Moreland, page 210. He summarised his history with the theatre and told her that Mr Andrews had told him that he would no longer be receiving shifts. Mr Benjamin said that he believed that the reasons Mr Andrews had given for this were 'without foundation' and wrote that he felt abused and exploited. Mr Benjamin also wrote that Mr Andrews had 'eventually compromised' by promising to consult with Ms Morland before finalising his decision.
34. Mr Benjamin went on to write that;

*I realise that, as a worker on a zero-hour contract with less than two years' employment, I have very few – if any – legal rights, and that Stefan needs no reason at all to stop giving me shifts. Nonetheless, I would hope there is some duty of ethical or pastoral care. This has caused me severe emotional and financial distress, and again, for no reason that I can comprehend as valid.*

35. He asked to meet with Ms Moreland to discuss his concerns.
36. Ms Morland replied on 10<sup>th</sup> October 2023, p209. She indicated that she had spoken to Mr Andrews before his meeting with Mr Benjamin. She indicated that she fully supported his decision, writing:

*I am sorry that you find the decision to not offer you any more casual work upsetting and unfair, but that is very much the nature of casual work. Stefan could have just stopped calling you for shifts without any reason, but he*

*decided to explain to you why he didn't want to call you any more. You may not agree with those reasons, but I believe they are valid, and I would suggest that you take the opportunity to start afresh at another theatre/theatre company.*

37. A P45 was issued to Mr Benjamin, but not until 11<sup>th</sup> March 2024. In his evidence Mr Andrews said that he was not sure why there was such a long delay. He agreed that, following the meeting, he expected Mr Benjamin to be issued a P45. He said that he was not sure why this had not happened.
38. A number of WhatsApp messages have been produced between Mr Benjamin and others. It is not necessary to deal with these in detail, but in my view it is apparent from them that Mr Benjamin understood at that point that he had been dismissed. In particular, on the 3<sup>rd</sup> October 2023 he messaged a friend 'I got fired', page 261 supplementary bundle. Similarly, on 7<sup>th</sup> February 2024, Mr Benjamin refers to 'the things I lost my job over', page 331 supplementary bundle. These messages are simply inconsistent with the suggestion that, following the 2<sup>nd</sup> October 2023 meeting, Mr Benjamin believed that there was an ongoing employment relationship between him and the Soho Theatre.

## **The law**

### *Employment status*

39. The starting point for considering employment status in reference to the Employment Rights Act 1996 is section 230. It provides the following definition:

#### **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.

40. The relevant issue in this case is whether there was a contract of service (there is no suggestion that the claimant was an apprentice). The modern approach to this analysis is set out in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] QB 497. In summary:

- a. An employee agrees that, in consideration for a wage or other remuneration, he will provide his own work and skill to perform service for his employer.
- b. An employee agrees, expressly or impliedly that in the performance of that service he will be subject to the employer's control to a sufficient degree to indicate an employment relationship.
- c. The other provisions of the contract are consistent with an employment relationship.

41. This approach to employment status is often described as 'the multiple test', because it involves considering the myriad factors that may be relevant to

whether a particular contract is one of service or not. This reflects the fact that, despite considerable effort, a simple, precise and comprehensive definition of an employment contract has never been identified. This is in large part because of the many different working situations that exist in practice and small distinctions between legal terms will often have substantial practical impacts. All of this means that, while the majority of relationships are easy to categorise, there will always be 'edge cases' where categorisation is more difficult and more subtle.

42. The multiple test recognises these complexities and requires a holistic analysis of the contractual relationship as a whole, taking into account all the relevant factors, including:

- a. *Mutuality of obligation*: In general, employers are required to provide a particular level of work and employees are obliged to perform that work. Where there is no obligation to offer work or to accept it if offered, a contract is unlikely to be one of employment, see *Carmichael v National Power plc* [1999] ICR 1226.
- b. *Control*: An employer has control over their employee. They can give orders and expect them to be carried out. This contrasts with an independent contractor, who is engaged to provide a particular result or service, but has discretion over how that end is to be achieved.

What is most significant, however, is not whether there are actual day-to-day instructions being given, but where the ultimate right of control resides, see *White v Troutbeck SA* [2013] IRLR 949. This reflects the fact that many employees, by reason of their circumstances or expertise, are given considerable practical autonomy. What is most relevant to the control element of the test is whether the engager has a contractual right to control, whether they choose to exercise it or not.

- c. *Organisational integration*: The more an individual is integrated into an organisation, the more likely they are to be an employee.
- d. *Economic reality*: This, fundamentally, requires considering whether an individual is operating their own business, rather than being employed by someone else.

43. In the circumstances of this case, the question of mutuality of obligation is of particular importance. It is important to note that the term is used in two slightly different ways in the context of a potential employment relationship. The first refers to the basic requirements of any contractual relationship. For a contract to exist there must be at least two contracting parties. There must be an offer, that offer must be accepted, there must be consideration (that is something of value that each party to the contract promises to provide to the other) and an intention to create the requisite legal relationship. These requirements meant that without mutual obligations there can be no contract at all. In such circumstances, there can be no employment relationship, since that is a form of contract.

44. The second way in which the term 'mutuality of obligation' is used is in respect to the type of mutual obligations that means that a particular contract is a contract of employment, rather than some other form of contract.

45. Mutuality of obligation in this sense was defined by the Court of Appeal in *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612 as 'there must be mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer. If such mutuality is not present, then either there is no contract at all or whatever contract there is must be a contract for services or something else, but not a contract of service'.
46. As noted above, the paradigmatic form of such obligations is that an employee agrees to provide a particular level of work (such as agreeing to work 9am to 5pm, Monday to Friday) while the employer agrees to provide a particular level of pay.
47. There are, however, many ways in which a contractual agreement may have some level of mutual obligation, which does not fit precisely into the classical form. For example, an engager may agree to provide a reasonable level of work or to share what work is available fairly among a particular group of people. Similarly, a worker may agree to take on work that they are offered, unless they have a good reason to refuse, or to take on a reasonable level of work. There have been cases where such agreements have been found to contain sufficient mutuality of obligation that, when all the relevant factors are considered as a whole, that an employment contract exists. This occurred in the *Nethermere* case, which concerned home workers engaged in tailoring, who had no fixed hours or obligation to accept work and were paid according to the amount of work they performed. The majority of the Court of Appeal concluded that there was sufficient contractual obligation, to both continue to offer and to continue to perform that piece work, to sustain an employment contract.
48. The further an agreement moves away from the classic work / wage bargain, however, the lower the level of mutuality of obligation is likely to be. And therefore the less likely that an agreement constitutes a contract of employment.
49. It has been made clear by the Supreme Court in *Professional Game Match Officials Ltd v Revenue and Customs Commissioners* [2024] ICR 1480 that a) a sufficient level of mutuality of obligation and control are necessary for a contract to be one of employment; b) once a sufficient level of mutuality of obligation and control are established the precise nature of those obligations and level of control remain important to the overall assessment; but they should not receive undue focus.
50. It is useful to bear in mind the guidance of then Mr Justice Mummery endorsed by the Court of Appeal in *Hall (Inspector of Taxes v Lorimer)* [1994] ICR 218. He points out that the multiple test is not a mechanical exercise of running through a checklist, but rather an attempt to arrive at an overall picture from the accumulation of detail. This requires stepping back to consider the picture as a whole. It requires evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not every factor is of equal weight and the importance of a particular factor may vary from one situation to another.
51. How the parties view or label their relationship is a relevant, but not conclusive factor for consideration, see *Quashie v Stringfellow Restaurants Ltd* [2013] IRLR 99. What is important is the contractual relationship between the parties,

not how they perceived or labelled it. Similarly, how an individual or engager has represented the tax status of the arrangement to HMRC is relevant, but not conclusive, see *Richards v Waterfield Homes Ltd* [2023] IRLR 145.

### *Termination of contract*

52. Whether in relation to a contract of employment or another type of contract relating to work, that contract may be terminated by the employer / engager. Since the principles apply equally to both employees and other forms of worker I shall refer to employees in this section.
53. An intention to dismiss will not, without more, amount to a dismissal. The decision to dismiss must be communicated, see *Gisda Cyf v Barratt* [2010] IRLR 1073.
54. The Employment Appeal Tribunal has set out guidance on determining whether a dismissal has occurred in *Omar v Epping Forest District Citizens Advice* [2024] IRLR 92. This guidance includes that:
- a. The words used must be construed objectively in all the relevant circumstances. The subjective uncommunicated intentions of an employer are not relevant. The subjective understanding of an employee is relevant, but not determinative.
  - b. For a dismissal to occur, it must be apparent to the reasonable bystander that the words used continued words of immediate dismissal or dismissal on notice. Communicating an intention to dismiss in the future is not enough.
  - c. It must also be apparent that the decision to dismiss was 'seriously meant' / 'really intended' / 'conscious and rational'. These terms are intended to capture the requirement that the speaker genuinely intended to dismiss and was 'in their right mind'. In most cases where unambiguous words of dismissal are used there will be no doubt that the dismissal was seriously meant.

### **Conclusions**

55. Applying the law to the findings of fact, I reach the following conclusions.

#### *Employment Status*

56. I do find that there was a legal obligation on the Soho Theatre to use best endeavours to allocate Mr Benjamin suitable work if it was available. That obligation is set out in clause 8.1 of the statement of particulars. The manner in which the contract operated in practice is consistent with such an obligation.
57. I do not, however, find that there was any similar reciprocal legal obligation on Mr Benjamin. There is no similar clause in the statement to the effect that he would use best endeavours to accept work when offered; to accept a reasonable amount of work or anything similar. It is clear from clause 8.3 that the hours of work are subject to agreement between Mr Benjamin and Soho

Theatre. These written terms are consistent with how the contract operated in practice.

58. It seems to me that, as with many zero-hour type arrangements, Soho Theatre did not insist on any obligation on the part of its casual technicians to accept work, because in practice this was unnecessary. The casual technicians agreed to work for the theatre because they wished to accept shifts. There was an obvious economic incentive that they accept a reasonable level of shifts when they were offered. In practice, they did so, without the need for any contractual obligation.
59. There will be cases in which it will be appropriate to infer from the course of conduct between parties and the work carried out that some form of binding contractual term as to the work to be offered or to be carried out has been created. That was the situation that arose in *Nethermere*. This is not such a case. There was a written contract intended to govern the relationship. There was also a clear distinction within the workplace between the permanent technicians, who were required to work set hours, and the casual technicians, who were not. Further, I accepted Mr Andrews' evidence that many of the casual technicians did turn down work regularly or not take on work for a significant period because they were engaged elsewhere. All of this makes it inappropriate to infer that there had been any variation of the contract to require Mr Benjamin or the other casual technicians to take on any particular level of work.
60. Taking these points together, I find that there was a sufficient mutuality of obligation to potentially sustain an employment contract, depending on the other factors to be considered. This is not a case where there were no mutual obligations at all (meaning that there was no contract) or where the obligations were of a nature that the contract could not be one of employment. In my view, the obligation to use best endeavours to allocate available work between the casual technicians was sufficient to potentially support an employment contract – depending on the other relevant factors.
61. Nonetheless, the nature of these mutual obligations was a strong indication that Mr Benjamin was not an employee. The obligation to seek to provide Mr Benjamin suitable work if it was available is some distance from the much stronger obligation to provide a particular level of work. The fact that Mr Benjamin was then under no obligation to accept any offer of work is a strong indication that the contract was not one of employment.
62. There was limited evidence presented to the Tribunal in respect of the control test. It is apparent, however, from the nature of the work conducted by Mr Benjamin that there must have been a significant level of control. Mr Benjamin's work would have needed to be coordinated closely with the productions that he worked upon, in which he played only a part. In order to facilitate this, as a practical matter, Soho Theatre must have had the contractual power to closely instruct Mr Benjamin in how to perform his duties. This is a strong factor pointing towards an employment relationship.
63. I find that there was a strong element of organisational integration. Mr Benjamin was part of a limited pool of casual technicians. He and many others of that group worked regularly for the Soho Theatre. They were provided with ID cards,

some training and with tools / equipment. All of this tends to point towards a contract of employment.

64. I do not place significant weight on the statements made in the annual accounts of Soho Theatre. As I have noted, the classification of the relationship by the parties can be a relevant consideration, but it is not determinative. The importance of any such classification is likely to vary depending on a number of factors. Most importantly, a carefully considered determination will generally have more weight than an unconsidered or hasty statement. It is also important to recognise that terms such as 'employment' are not always used in a technical or legally accurate way. In addition to their legal and technical meanings, they have a colloquial use.
65. I do not find that the bald statement in accounts that an organisation has a particular number of employees has any significant value in my analysis in these circumstances. Although Mr Benjamin argued that it would be a very serious error that might bring the whole financial statement into doubt, or even amount to fraud, this does not reflect my experience of the practical reality of such documents. Therefore, in so far as it is relevant, this was a factor indicating that Mr Benjamin was an employee, but it a very weak indicator indeed.
66. The fact that the statement of particulars consistently referred to Mr Benjamin as an employee is also a factor suggesting that there was a contract of employment. The references to holidays, notice periods and unauthorised absence also tend to suggest an employment relationship. This indication is, however, weakened, by the fact that the overall impression of the statement is that it is a generic document, based on some form of standard precedent. The evidence does not suggest that the use of the term 'employment' was as a result of any careful legal analysis or advice.
67. I do not, however, give any weight to the fact that Soho Theatre operated disciplinary and grievance procedures in relation to its casual technicians. I note the comments made by then President Elias in *St Ives Plymouth Ltd v Haggerty* UKEAT/0107/08 on this point. Appropriate disciplinary and grievance procedures are entirely consistent with a worker being a 'true casual' and not an employee.
68. Stepping back from these individual factors to consider the position as a whole, I conclude that Mr Benjamin was not employed under a contract of employment. Although a number of factors, in particular the high level of subordination and control, point towards employment, in my view they are outweighed by the lack of significant mutuality of obligation, which is a powerful factor weighing against there being a contract of employment. This was fundamentally a true zero-hour or casual relationship in which Soho Theatre had only a limited obligation to offer work and Mr Benjamin had no contractual obligations to accept it.
69. I bear in mind the warning given by the Supreme Court in *Professional Game Match Officials Ltd* that a single factor, including mutuality of obligation, should not receive undue focus. But it is in the nature of the multiple test that the importance of the potential factors will vary depending on the circumstances of the case. There are cases where a single factor is of particular importance and significance. In my view, this is one of these. The mutual obligations that existed between Mr Benjamin and Soho Theatre were barely sufficient to potentially

sustain an employment relationship. Although many of the other relevant factors point towards employment status, they do not do so sufficiently strongly to outweigh that fact.

*End of contract*

70. I have concluded that the contractual relationship between Mr Benjamin and the Soho Theatre came to an end on 2<sup>nd</sup> October 2023.
71. Mr Andrews' communication during that meeting was clear and unambiguous. He said that Mr Benjamin's future shifts were cancelled and he would not be offered any work. There is nothing to suggest that these words were not 'seriously meant'.
72. Mr Benjamin argued that the contract persisted until 11<sup>th</sup> March 2024, when he was sent the P45. He made two arguments in support of this.
73. First, he argued that the nature of his contract meant that there was nothing legally inconsistent in a decision not to offer him any shifts, while maintaining the contractual relationship. He argues that the only action incompatible with this position was the issuing of his P45 and therefore he was only dismissed at the point that this occurred.
74. This argument is somewhat inconsistent both with Mr Benjamin's arguments around mutuality of obligation and my finding that Soho Theatre had an obligation to allocate suitable work to Mr Benjamin if it was available.
75. More fundamentally, however, the flaw in this argument is that while it would have been possible for Soho Theatre to cease allocating shifts to Mr Benjamin, while allowing the contract to persist, this is simply not what occurred. Mr Andrews' communication was clear and unambiguous that the shifts that had been allocated to Mr Benjamin were to be cancelled and he would not be offered shifts in the future, because of the concerns that Mr Andrews had laid out in that meeting. In this context, this could only reasonably be understood as a termination of the contract.
76. Although Mr Benjamin's email of the 7<sup>th</sup> October 2023 can be read as suggesting that Mr Andrews' initial position was modified in some way in the course of their conversation, to contain a delay while Ms Moreland was consulted, I have concluded that there remained a clear and unambiguous communication that Mr Benjamin was being dismissed with immediate effect on the 2<sup>nd</sup> October. Both Mr Benjamin and Mr Andrews agreed that Mr Andrews said that Mr Benjamin's upcoming shifts were to be cancelled and he would not be offered any more. It is likely that Mr Andrew did agree to discuss Mr Benjamin's situation further with Ms Moreland following the meeting, but I concluded that he did not agree to delay the dismissal to do so.
77. Even if there had been some ambiguity or doubt at the meeting of the 2<sup>nd</sup> October 2023, that would have been resolved by Ms Moreland's email on 9<sup>th</sup>. That again includes a clear statement that Mr Benjamin would not be offered further shifts. Ms Moreland goes on to say that Mr Benjamin should 'start afresh at another theatre/theatre company'. Again, in context, this could only

reasonably be understood as confirmation that the contract was being terminated.

78. It is also clear from the contemporaneous messages that Mr Benjamin's subjective understanding of the position at the time was that the relationship had ended.

*Time limits*

79. It follows from this that the claims relating to the dismissal were brought outside the statutory deadline.

80. This would apply to the claim for unfair dismissal but, given that I have concluded that Mr Benjamin was not an employee, that claim must be dismissed in any event.

81. It also applies to the claim made under regulation 4 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, since the less favourable treatment that Mr Benjamin complains of is the dismissal. The statutory time limit to bring the claim was therefore 1<sup>st</sup> January 2024.

82. This issue of whether time should be extended was not before the Tribunal at this preliminary hearing and therefore I have not reached any conclusion in relation to it.

Employment Judge Reed

Date: 6<sup>th</sup> February 2026

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

16 February 2026

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FOR EMPLOYMENT TRIBUNALS