



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms V Chalk

**Respondent:** Green Hammerton Church of England Primary School

**Heard at:** Leeds

**On:** 3,4 and 9 March 2026

**Before:** Employment Judge Shepherd

**Appearances:**

**For the Claimant:** Mr Irving, National Supply Teachers Network

**For the Respondent:** Ms Martin, Counsel

## RESERVED JUDGMENT

The complaints of breaches of regulations 5, 13 and 17 of the Agency Workers Regulations 2010 are not well-founded and are dismissed.

## REASONS

1. The claimant was represented by Mr Irving and the respondent was represented by Ms Martin.
2. I heard evidence from Victoria Chalk, the claimant, and Davinia Pearson, Headteacher.
3. I had sight of a bundle of documents which was numbered up to page 545. I considered those documents to which I was referred by the parties.
4. The claims brought by the claimant are for breaches of Regulations 5,13 and 17 of the Agency Workers Regulations 2010.

5. The complaints and issues to be determined were set out in the Record of a Preliminary Hearing before Employment Judge Drake on 21 February 2025 and amended and agreed as follows:

## **The Complaints**

1. The Claimant is making the following complaints:
  - 1.1 Failing to comply with the Claimant's alleged entitlement to the same working and employment conditions as she would be entitled to for doing the same job had she been recruited to it - contrary to Reg 5 AWR ;
  - 1.2 Failing to comply with the Claimant's right to be advised of and/or given the same opportunity as a comparable worker to find permanent employment - contrary to Reg 13 AWR;
  - 1.3 Subjecting the Claimant to detriment as a result of any act, or deliberate failure to act, of making a request for a written statement, or doing any act in relation to a temporary work agency, hirer, or any other person – contrary to Reg 17 AWR.

## **The Issues**

### **Regulation 5 of the Agency Workers Regulations 2010**

1. Has the Claimant completed the 12-week qualifying period as set out in Regulation 7 of the Agency Worker Regulations?
  - a. The Claimant relies upon the following as qualifying weeks:
    - i. Week 1: 7, 8,9 June 2023
    - ii. Week 2: 14, 15, 16 June 2023
    - iii. Week 3: 21,22, 23 June 2023
    - iv. Week 4: 28, 29, 30 June 2023
    - v. Week 5: 5, 6, 7 July 2023
    - vi. Week 6: 12, 13, 14 July 2023
    - vii. Week 7: 19, 20, 21 July 2023
    - viii. Week 8: 21, 22 September 2023
    - ix. Week 9: 28, 29 September 2023
    - x. Week 10: 5, 6 October 2023
    - xi. Week 11: 12 October 2023
    - xii. Week 12: 19 October 2023
  - b. Was there a break in the 12-week period such that the 12 weeks were not 'continuous'?
  - c. Was the Claimant performing the same role during those 12 weeks?

2. What was the Claimant's pay? The parties agree that the Claimant's full day rate was £135.
3. If the Claimant had been recruited directly by the hirer, what would her pay have been for doing the same job at the time the qualifying period commenced?
  - a. The Claimant contends that she would have been allocated to the Upper Pay Scale 1 (£43,266) which equates to a daily rate of £221.88 (on the basis of 195 days per academic year).
4. If the Claimant's actual pay was less than it would have been if she had been directly recruited, for what time period was the Claimant underpaid?
  - a. The Claimant contends that she was underpaid on the following days:
    - i. 26 October 2023 (pm only)
    - ii. 23 November 2023 (pm only)
    - iii. 30 November 2023 (pm only)
    - iv. 7 December 2023 (pm only)
    - v. 14 December 2023 (pm only)
    - vi. 21 December 2023 (pm only)
    - vii. 10 January 2024 (pm only)
    - viii. 17 January 2024 (pm only)
    - ix. 18 January 2024
    - x. 19 January 2024
5. If there has been a breach of Regulation 5, to what extent is the Respondent responsible for the breach?

**Regulation 13 of the Agency Worker Regulations 2010**

6. Was there a relevant vacant post within the hirer in December 2023 / January 2024?
  - a. The vacant post was the post of 'teacher'. On the Claimant's request, the Respondent provided a job advert which stated, 'This campaign runs 13.12.2023 – 25.3.2024'
  - b. The Claimant identifies all teachers in the school (who are not paid on the leadership pay scale) to be comparable workers.
7. Was the Claimant given the same opportunity as a comparable worker to find permanent employment with the hirer? The Respondent contends that roles are advertised internally within the School on a notice board and discussed by word of mouth internally.

**Regulation 17 of the Agency Worker Regulations 2010**

8. Did the Claimant do one of the things set out in Regulation 17(3)?
  - a. The Claimant relies upon Regulation 17(3)(a)(iii) and (v), namely that she made a request under Regulation 16 for a written statement and that she

had alleged that a temporary work agency or hirer had breached the Agency Worker Regulations.

- b. In respect of Regulation 17(3)(a)(iii), the Claimant contends that she made a request for a written statement on the following dates:
  - i. 20 January 2024 to the Agency. The Claimant confirms that she contacted the Agency by email on 20.1.24.
  - ii. 21 January 2024 to the Agency in two emails. The Claimant confirms that she contacted the Agency by email on 21.1.24 at 11:43 and 14:00.
- c. In respect of Regulation 17(3)(a)(v), the Claimant relies upon the following:
  - i. 20 January 2024 to the Agency. The Claimant confirms that she contacted the Agency by email on 20.1.24.
  - ii. 21 January 2024 to the Agency in two emails. The Claimant confirms that she contacted the Agency by email on 21.1.24 at 11:43 and 14:00.
  - iii. 23 January 2024 to the Agency and the Respondent by email.
  - iv. 1 February 2024 to the Agency, Respondent, and the payroll company by email.

9. Was the Claimant subjected by the Respondent to a detriment, namely the termination of her assignment on 22 January 2024?

10. If yes, did the Respondent terminate the Claimant's assignment on the ground that she had done something under Regulation 17(3)?

## **Remedy**

11. What loss has the Claimant suffered as a result of any breaches of the Regulations?

12. If compensation is ordered by the Tribunal, and having regard to the extent of each Respondent's responsibility for the infringement to which the complaint relates, what amount payable by each Respondent is just and equitable?

13. If the Regulation 17(2) claim is well-founded, what is the appropriate award for injury to feelings?

## **Background/facts**

6. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that I made from which I drew my conclusions.
7. Where I heard evidence on matters for which I make no finding or do not make a finding to the same level of detail as the evidence presented, that reflects the extent to which I consider that the particular matter assists in determining the issues. Some of my findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.
8. The claimant was engaged by a recruitment agency, Supported Recruitment Ltd (a former respondent), to work as a supply teacher at the respondent school. The first assignment was from 7 June 2023 working three days per week and was for 7 weeks. The respondent agreed to pay the agency at what was said to be a higher daily rate. The agency then agreed with the claimant her rate pay for the assignment.
9. Davinia Pearson, the head teacher said that first assignment required cover for the class to deliver and supervise learning, to participate in staff meetings and to work alongside other members of staff to keep the children safe. She said that the claimant chose not to attend meetings, did not take on any responsibilities assigned to any other teacher and refused any role in assessment for the pupils she supervised.
10. The first assignment came to an end on 21 July 2023. The claimant was not expected to return. The school closed for the summer holidays on 24 July 2023 following to staff training days on 24 and 25 of July 2023 which the claimant did not attend.
11. The academic year commenced on Monday, 4 September 2023. The respondent school requested supply cover supervision from the agency on 8 and 15 September 2023. The claimant was not available and another individual provided cover for those days.
12. The claimant was engaged through the agency commencing on 21 September 2023. Davinia Pearson said that the claimant was engaged for three weeks and, during that time worked three full days and two half days. The difference in duties and level of responsibility from the first assignment was that the claimant was required to deliver the teacher's planned lessons and mark children's work. She did not have full class responsibilities such as planning, long-term assessment of children, report writing and participating in parents evenings and staff meetings.
13. The difference in duties and responsibilities meant that the claimant was paid at a different, lower daily rate of £179.00 per day as opposed to the previous daily rate of £220.

14. The claimant ceased undertaking this assignment on 6 October 2023.
15. On 12 October 2023 the claimant commenced assignment 3 with the respondent. The claimant was required to supervise another class and to cover the teacher's Planning Preparation and Assessment (PPA) time and to deliver the teacher's planned work. The claimant was required to be in school no more than three hours each week. Davinia Pearson said that the claimant was not required to do any planning of lessons or marking of work and as supervision cover, she was paid at a Higher Level Teaching Assistant (HLTA) rates.
16. The respondent contacted the agency to obtain cover for a new assignment for a period of four weeks commencing 18 January 2024.
17. The claimant then worked at the school on 18 January 2024 and 19 January 2024.
18. On 22 January 2024 the agency contacted the respondent indicating that the claimant was requesting a higher rate of pay and stated that the other option was to look for someone else to cover the role.
19. The respondent informed the agency that they were not prepared to pay the agency at the increased rate. The assignment was for PPA cover and could be undertaken by an HLTA. The assignment was completed by another Agency worker.

## **THE LAW**

### **The Agency Workers Regulations 2010**

20. Regulation 5 of the AWR 2010 provides that, after a qualifying period, an agency worker shall be entitled to the same basic working and employment conditions (which includes pay) as they would be entitled to for doing the same job had they been recruited by the hirer. Regulation 5(3) says that the entitlement is deemed to have been complied with where an agency worker is working under the same terms and conditions as a comparable employee, as defined under Regulation 5(4).
21. Regulation 7 of the AWR 2010 sets out the qualifying period for Regulation 5 rights:
  - (1) Regulation 5 does not apply unless an agency worker has completed the qualifying period.
  - (2) To complete the qualifying period the agency worker must work in the same role with the same hirer for 12 continuous calendar weeks, during one or more assignments.
  - (3) For the purposes of this regulation and regulations 8 and 9, the agency worker works in "the same role" unless—

- (a) the agency worker has started a new role with the same hirer, whether supplied by the same or by a different temporary work agency;
- (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and
- (c) the temporary work agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role.

(4) For the purposes of this regulation, any week during the whole or part of which an agency worker works during an assignment is counted as a calendar week.

(5) For the purposes of this regulation and regulations 8 and 9, when calculating whether any weeks completed with a particular hirer are continuous, where—

- (a) the agency worker has started working during an assignment, and there is a break, either between assignments or during an assignment, when the agency worker is not working,

- (b) paragraph (8) applies to that break, and

- (c) the agency worker returns to work in the same role with the same hirer, any continuous weeks during which the agency worker worked for that hirer before the break shall be carried forward and treated as continuous with any weeks during which the agency worker works for that hirer after the break.

...

(8) This paragraph applies where there is a break between assignments, or during an assignment, when the agency worker is not working, and the break is—

- (a) for any reason and the break is not more than six calendar weeks;
- (b) wholly due to the fact that the agency worker is incapable of working in consequence of sickness or injury, and the requirements of paragraph (9) are satisfied;
- (c) related to pregnancy, childbirth or maternity and is at a time in a protected period;
- (d) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the agency worker is otherwise entitled which is;
  - (i) ordinary, compulsory or additional maternity leave;
  - (ii) ordinary or additional adoption leave;
  - (iii) paternity leave;
  - (iv) time off or other leave not listed in sub-paragraph (d)(i), (ii) or (iii); or
  - (v) for more than one of the reasons listed in sub-paragraph (d)(i) to (iv);
- (e) wholly due to the fact that the agency worker is required to attend at any place in pursuance of being summoned for service as a juror under the Juries Act 1974 M1, the Coroners Act 1988 M2, the Court of Session Act 1988 M3 or the Criminal Procedure (Scotland) Act 1995 M4, and the break is 28 calendar weeks or less;
- (f) wholly due to a temporary cessation in the hirer's requirement for any worker to be present at the establishment and work in a particular role, for a pre-determined period of time according to the established custom and practices of the hirer; or

- (g) wholly due to a strike, lock-out or other industrial action at the hirer's establishment; *or*
- (h) wholly due to more than one of the reasons listed in sub-paragraphs (b), (c), (d), (e), (f) or (g).

22. Regulation 13(1) of the AWR 2010 states that an agency worker has during an assignment the right to be informed by the hirer of any relevant vacant posts with the hirer, to give that agency worker the same opportunity as a comparable worker to find permanent employment with the hirer.

23. Regulation 13(4) states that for the purposes of Regulation 13(1), the hirer may inform the agency worker by a general announcement in a suitable place in the hirer's establishment.

24. Regulation 17 of the AWR 2010 states:...

(2) An agency worker has the right not to be subjected to any detriment by, or as a result of, any act, or any deliberate failure to act, of a temporary work agency or the hirer, done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the agency worker—

- (i) brought proceedings under these Regulations;
- (ii) gave evidence or information in connection with such proceedings brought by any agency worker;
- (iii) made a request under regulation 16 for a written statement;
- (iv) otherwise did anything under these Regulations in relation to a temporary work agency, hirer, or any other person;
- (v) alleged that a temporary work agency or hirer has breached these Regulations;
- (vi) refused (or proposed to refuse) to forgo a right conferred by these Regulations; or

(b) that the hirer or a temporary work agency believes or suspects that the agency worker has done or intends to do any of the things mentioned in sub-paragraph (a).

25. I had the benefit of written and oral submissions from Ms Martin on behalf of the respondent and Mr Irving on behalf of the claimant. These were helpful. I have not set out all the submissions but the parties should be assured that I have taken into account everything that was submitted to me.

## **Conclusions**

26. I have considered whether the claimant completed the 12 week qualifying period as set out in regulation 7 of the Agency Workers Regulations. There was a gap in continuity before assignment 2. The term started on 4 September 2023. Someone else from the agency covered the first two weeks and the claimant started the second assignment on 21 September 2023.

27. Regulation 7 (8) provides that breaks during or between assignments of six calendar weeks will not count towards the qualifying period of 12 weeks.

28. In this case the break was eight weeks between week commencing 24 July 2023 and 11 September 2023. Only six weeks of that break was due to a temporary cessation in the hirer's requirement for an employee to be present at the establishment.

29. The claimant worked for seven weeks commencing 7 June 2023. She did not work the first two weeks of the autumn term which commenced on 4 September 2023. Another agency worker was employed for those two weeks. This was an eight week break which meant that the claimant had not worked the requisite 12 week qualifying period as set out in regulation 11 (2).

30. I am not satisfied that the claimant has established that she worked for the required 12 continuous calendar weeks qualifying period as required under Regulation 7.

31. I have considered whether the claimant was performing the same role as an employee recruited by the hirer. This involves determining whether the claimant carried out work equal to or broadly similar to that of a permanent teacher or whether there were significant differences. In assignment 1 the claimant was paid at a rate equivalent to a teacher for assignment one at level M3 on the Teachers Pay Scales. The level of pay was a matter between the agency and the claimant. This was because it was a long-term assignment that lasted seven weeks. The claimant was required to fulfil the role of a year 1/2 teacher and was paid accordingly.

32. The difference in duties on assignment 2 was that the claimant was required to deliver the teacher's planned lessons and mark children's work but she did not have the full class responsibilities such as planning, long-term assessment of children, report writing and participation in parents evenings and staff meetings. The claimant was paid at the daily supply rate which was different from assignment 1.

33. In Assignment 3 the claimant was only required to cover one session of PPA time and it was work that could have been carried out by a Higher Level Teaching Assistant.

34. With regard to assignment 4. The assignment required the claimant to deliver the teacher's planned work and she was not required to carry out any planning of the lessons. In the assignment 1 the claimant was paid at a higher rate than the standard agency rate which was equivalent to level M3 and the Teachers main pay Scale. The

claimant accepted that the principle of “pay portability” no longer applied in respect of previous pay entitlements and Governing bodies now have the discretion to pay teachers on any school pay policy.

35. I am not satisfied that the claimant has established that she was carrying out the same or broadly similar role to that of a permanent teacher with the respondent. There were significant differences in the role carried out by the claimant in assignments 2, 3 and 4. The claimant did not have the full class responsibilities in those assignments.

36. With regard to the regulation 13 claim, Davinia Pearson gave clear and credible evidence that there were a number of roles available within a period of time. She did not and would not approach any potential internal candidates to avoid any risk of allegations of predetermination.

37. The teaching role was advertised internally on the school noticeboard and this was available to the claimant. The claimant had the same information in respect of vacancies as the permanent members of staff.

38.. With regard to the regulation 17 claim, the claimant relies upon three emails to the agency on 20 and 21 January 2024. She also relies on to emails of 23 January 2024 and 1 February 2024. However, those two emails postdate the alleged detriment of termination of the claimant’s assignment on 22 January 2024.

39. The claimant did not allege a breach of the Agency Workers Regulations or request a written statement under Regulation 16.

40. The respondent did not terminate the claimant’s assignment. It indicated to the agency that it was unwilling to pay the claimant an increased rate. The respondent was willing to continue the assignment with no preference as to who provided the supervision cover required. The respondent believed that it was the claimant who had informed the agency that she was no longer prepared to work for less than the Teachers’ Upper Pay Scale 1. The respondent was content to pay the claimant the figure which had been agreed with the claimant one week earlier and it was the claimant who refused to complete the assignment.

41. The claimant has not established that there was a detriment under regulation 17.

42. In all the circumstances, the claimant has not established that the respondent has breached the Agency Workers Regulations 2010 and her claims are dismissed in their entirety.

Employment Judge Shepherd

10 March 2026