



EMPLOYMENT TRIBUNALS

Claimant: Miss K Jones

Respondent: Fusion Professional Ltd

Heard at: Watford (in public)

On: 2 July 2026

Before: Employment Judge Harrison

Appearances

For the claimant: In person

For the respondent: Mr A Bachu, Counsel

PRELIMINARY HEARING IN PUBLIC

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. At the relevant time the claimant was not an employee of the respondent within the meaning of section 230(1) Employment Rights Act 1996 (**ERA**), but she was a worker within the meaning of section 230(3)(b) ERA. The Tribunal makes a declaration to this effect.
2. Claims of unfair dismissal and breach of contract are therefore dismissed because the Tribunal does not have jurisdiction to determine them.
3. Statutory claims for holiday pay and unlawful deductions from wages (under the Working Time Regulations 1998 and/or ERA) were not presented within the applicable time limits. It was reasonably practicable to present them in time. The claims for holiday pay and unlawful deductions from wages are therefore dismissed.

4. The claim of disability discrimination was presented within the applicable time limit and will therefore proceed.

REASONS

Introduction, claims, procedure and evidence

1. This was a preliminary hearing (**PH**) in public to determine two questions. First what was the employment status of the claimant at the time her relationship with the respondent ended and secondly are her claims in time? The purpose of the hearing and a longer explanation of these questions was recorded in a Notice of Hearing sent to the parties on 13 February 2026.
2. At the start of the hearing both parties confirmed that they understood this to be a substantive hearing within Rule 52(1)(b) of the Employment Tribunal Rules where I would hear evidence and make a final determination on time.
3. Before hearing evidence, I discussed the claims with the parties. I had before me a bundle, and references in these reasons are to page numbers in the bundle. During my discussion with the parties, a question arose whether the claimant wished to refer in her evidence to WhatsApp messages that did not appear in the bundle. She confirmed that she did not.
4. The claimant confirmed that she was bringing claims relating to constructive unfair dismissal; breach of contract relating to holiday, wages (including overtime) and pension; statutory claims for holiday pay and unlawful deductions; and a claim of disability discrimination under the Equality Act 2010. The claimant confirmed that the date of the alleged discrimination was, as recorded in her ET1, sometime in May 2025, and related to derogatory comments made about her by the respondent to people in the respondent's workplace and in their wider industry. The claimant says that she was told about this for the first time in May 2025 by David Jelley and again in June 2025 by Clare Duffield. As the claimant was not represented, I spoke to her about claims she had listed as breach of confidentiality and injury to feelings. She accepted that these were not separate claims a tribunal could hear within its statutory framework.
5. I heard evidence from the claimant on her own behalf and from Mr Chris Nicolaou, Director of the respondent. Both gave evidence on oath and had produced a witness statement in advance of the hearing. I adjourned to read the statements and evidence started at 10.55.
6. About 15 minutes into giving her evidence the claimant became very upset and initially indicated that she could not continue with her case. I suggested she

take a break to consider her position. After two adjournments the claimant said she wanted to continue and cross examination restarted at 12.15. Evidence from the respondent started at 3pm. The respondent had provided me with written submissions which Mr Bachu spoke to. I have read these, including taking note of the cases I am referred to. I explained the purpose of submissions to the claimant, who chose not to make these. Given the way that the day had progressed there was insufficient time to make and give judgment orally, and I reserved my decision.

Facts

7. It is not in dispute that the claimant was an employee of the respondent (or an associated company, Hairco and Beauty) from July 2018 and that subsequently, at the claimant's request, the parties agreed that the claimant would become self-employed.
8. The claimant set up a company called Grand Master Brands Ltd (**GMBL**) in February 2024 and from this time onwards GMBL invoiced the respondent for work done on a monthly basis. The parties did not enter into a signed agreement. The claimant also claimed expenses from the respondent. She was no longer subject to PAYE arrangements and accepted in evidence that from this point she has paid no tax or NI either as an employee of the respondent or through her company. After this change in her arrangements the claimant was not paid for pension, holidays or sick pay.
9. The claimant said that apart from her rate of pay and the removal of benefits nothing else changed in respect of her contractual relationship with the respondent, and that the move to self-employment was just a label. She said that she worked to the same arrangements as previously, having work to do and being available to work full time. The claimant says she asked to make the change to provide a more efficient relationship with the respondent, and she said it could have led to her becoming a shareholder.
10. Mr Nicolaou accepted in cross examination that the claimant had work to do for the respondent and was available to work full time. He said in his written statement that after moving to a self-employed arrangement the claimant did the following:
 - a. created a social media page to build a brand/presence: I find that she did set up these pages, but I accept the claimant's evidence that she did not in fact use them;
 - b. undertook courses and training relevant to online selling: The claimant's evidence on this in cross examination was vague and I find that the claimant did undertake such courses, however I do not

find that the claimant had set up any business beyond that with the respondent;

- c. was free to work for other businesses: the claimant said she did not work for any other business. I accept this and Mr Nicolaou agreed;
- d. set her own hours and chose her own time off: the claimant said and I accept that as to hours she continued to work such hours as were required to do her job, however I also find that she managed these herself;
- e. moved to Wales: as a matter of fact, the claimant did make this move. She was not the only one of the respondent's employees working remotely but I accept Mr Nicolaou's evidence that the others doing this were in remote/sales roles; and
- f. controlled her own work: I accept Mr Nicolaou's evidence that the claimant was autonomous and worked with very limited direction. This is reflected in some of the evidence e.g. in WhatsApps about the claimant's clients (pp 175 and 176) and in Mr Nicolaou's email to the claimant of 25 April describing the way in which he and the claimant's relationship existed (p181). The latter was a contemporaneous account and was not challenged.

11. It is agreed that on a date between 25 and 28 March 2025 (but not later than this) the claimant joined a work video call with Mr Nicolaou. I find that it is more likely than not that the claimant used the words attributed to her by Mr Nicolaou in paragraph 27 of his statement during this video call. Although the claimant says now that she did not use these words Mr Nicolaou referred to them on 19 May 2025 (p188) shortly after the alleged conversation, and the claimant did not deny saying them at that time. Whilst the claimant did not refer to her language during the video call when doing so, she did send an apology to Mr Nicolaou on 15 April 2025 (p183).

12. No action was taken in respect of the claimant at this point under the disciplinary policy that had applied during her employment. Instead, Mr Nicolaou's position, which is broadly agreed by the claimant, is that the parties spoke about the claimant taking time away from the business. Mr Nicolaou says that he and the claimant agreed to this and that in his view this was the point at which what the parties then considered to be a business-to-business relationship came to an end, i.e. by 28 March 2025 at the latest.

13. About 2 days later the claimant and Mr Nicolaou had a telephone call. They subsequently exchanged various emails texts and WhatsApp messages (pp173-189 and pp197-201).

14. The respondent asserts that the relationship between the parties ended at the latest on 28 March 2025, the claimant says that it ended on 16 May 2025. I find that the following contemporaneous evidence is relevant to deciding what date the relationship between the parties ended:

- a. Whatsapp of 3 April (p173) refers to 'outstanding expenses etc.' suggests that the relationship is over and the claimant is tying up outstanding issues. The claimant also says in this WhatsApp that sick pay will be returned as the claimant is 'self-employed' and she would 'prefer that any weeks I wasn't working are deducted' reflecting the arrangement at the time that no sick pay was payable;
- b. the claimant asks by email (p180) if the respondent wants her to 'return to work for/with you...' and continues 'If however you do not wish for me to return....just let me know and we can agree a communication...'. I find that this shows both parties know the relationship has ended and that it is for the respondent to decide if the claimant can do further work for his business;
- c. 14 May (p185) claimant submitted expenses outstanding;
- d. 14 May (p178) Mr Nicolaou writes to the claimant clarifying that she is not returning to work;
- e. the claimant does not submit invoices after March 2025; and
- f. 16 May (p199) the claimant publishes a Facebook post stating that 'As of March of this year, I am no longer working for or with the current UK distributor of INSIGHT Professional....' (i.e. the respondent).

15. I make a finding of fact that the relationship between the parties ended on 28 March 2025 at the latest.

16. The claimant explained in evidence that in the light of her work experience managing others, she was aware of the 3-month time limit for submitting a claim to the employment tribunal.

17. At some point between 16 May and the end of the first week in June 2025 the claimant spoke to a friend who she described as being a senior person in a company who understood IR35 and employment. The claimant undertook some online searches about the position. From this point, the claimant said in evidence (and I accept) that she understood that although she and the respondent had re-classified her as self-employed, she might in fact be an employee if that was the day-to-day reality of her position, and that this might in turn give her the right to bring claims in the employment Tribunal.

18. The claimant accepted in evidence that by this point she knew she had a potential claim in the tribunal. She accepted that she did not act on this information immediately, she acted when she was ready, as:

- a. she was unwell and having support and treatment;
- b. she had mixed emotions and feelings; and
- c. she thought she had 3 months from 16 May.

19. The claimant has not provided any medical evidence to support her explanation. She was, during the period after 28 March until July 2025, engaged in communications with the respondent including producing and submitting invoices. Based on the evidence I have listed at 12 (a) to (f) above and in particular the claimant's own Facebook post (p199) stating that she had not worked with the respondent from March 2025 I find that the claimant did know, or should have known, that her working relationship with the respondent did not end on 16 May and that the actual date that her relationship with the respondent ended was (at the latest) 28 March 2025.

20. I find that the claimant first knew about the alleged statements giving rise to her claim of disability discrimination under the Equality Act 2010 in May 2025.

Law

Employment status

21. 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.

22. Mr Bachu's written submissions referred me to several cases about employment status, guiding me to consider the presence (or not) of personal service, mutuality of obligations and control. I considered his submissions and for the purposes of these written reasons set out an extract from 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.

23. I also repeat here the words of Baroness Hale in *Bates van Winkelhof v Clyde & Co LLP [2014] ICR 730, SC* (which itself helpfully reviews the case law) reminding me that this is a question of applying the law to the particular facts in a case:

'39. I agree with Maurice Kay LJ that there is "not a single key to unlock the words of the statute in every case". There can be no substitute for applying the words of the statute to the facts of the individual case. There will be cases where that is not easy to do.'

Time limits:

24. I directed myself to consider the statutory framework set out at sections 23 (deductions from wages) and 111 (unfair dismissal) ERA, Regulation 7 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (breach of contract) and Regulation 30 Working Time Regulations 1998 (holiday pay). Each of these requires a claim to be brought within 3 months of event giving rise to the claim or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

25. As to time limits under the Equality Act 2010 these are dealt with a section 123 as follows

123 Time limits

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (2)
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

26. On time limits Mr Bachu referred me to several cases at paragraphs 11-13 and 15-18 of his written submissions. As to the reasonable practicability test this included a reminder that this is not the same as reasonable (*Palmer and anor v Southend-on-Sea BC [1984] ICR 372, CA*) and the helpful summary of key points set out in *Lowri Beck Services v Brophy 2019 ECWA Civ 2490, CA*.

Conclusions

Termination date

27. I have found as a matter of fact that the relationship between the parties ended on (at the latest) 28 March 2025.

Employment status

28. In this case the facts show that the claimant was working on a full-time basis for the respondent. She had been an employee, but the parties agreed more than a year before their relationship ended, at the claimant's instigation, that she would cease to be employed. They both took active steps to reflect a move to self-employment.

29. This is a case where, at the relevant time, no contract was in place. The employment contract had ceased a year earlier, and the parties had not entered

into a commercial contract. The parties had labelled the claimant as self-employed, but this is not determinative of the question before me.

30. The claimant asserts this was in any case not the reality of her circumstances and that she was an employee. The respondent asserts the opposite.

31. On the facts I do not find that it was possible for the claimant to replace herself in undertaking work. Personal service was required and the respondent accepts this. The relationship between the parties also included a mutuality of obligation. The claimant continued to be given and to do work after her contract changed: this was not questioned.

32. On the other hand, I do not find that in the way the claimant undertook her work, there was sufficient control for this contract to meet the test to be an employment contract. This claimant had control of her working arrangements and hours, her client relationships and her location. The contemporaneous (and unchallenged) evidence I have referred to above at 14(f) in particular suggests that, in reality, Mr Nicolaou's management of the respondent was in some respects controlled by the claimant, not the other way around.

33. 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 claimant had established her own business through which to invoice the respondent for hours worked. She was not paid sick pay, holiday pay, or pension. There was no reliance by the respondent on employment arrangements for managing discipline.

34. Having applied the facts of this case to the legal tests I find that the claimant was neither self-employed nor an employee. These facts lead me to conclude that she was a worker within section 230 (3)(b).

35. For this reason, the tribunal lacks the jurisdiction to hear her claims for unfair dismissal or breach of contract.

Jurisdiction: time – unfair dismissal, statutory holiday pay, unlawful deductions

36. The end of the relationship between the parties having occurred on 28 March 2025 at the latest, the claimant had to present any claim for breach of contract, unfair dismissal, statutory holiday pay or a deduction from wages by 27 June 2025 in order to meet the requirements at s111 ERA.

37. The claimant approached ACAS on 21 July 2025, some 25 days late.

38. I remind myself that the test is not what was reasonable, but what was reasonably practicable. I have recorded the facts around the claimant's actions and knowledge at paragraphs 16-19. I have already found that the claimant did know or should have known that her relationship with the respondent ended on 28 March 2025 at the latest.
39. The evidence I have seen reflects that the claimant did know about the ACAS process, and she did know about time limits, as she had encountered these in her professional role. She had also made online enquiries about her situation.
40. By May or the first week of June the claimant had been given advice by a friend who she trusted about her situation and understood that this might give rise to potential tribunal claims. Being alert to the existence of the process, I find that it would have been reasonably practicable for the claimant to have submitted her claim within the time limits and she did not do this. The facts I have found and referred to above, e.g. the submission of invoices, satisfy me that the claimant was able to undertake other similar activities even whilst unwell. She has not supplied evidence to indicate that she could not act for medical reasons.

Jurisdiction: time – disability discrimination

41. The claimant's claim for disability discrimination arose in May 2025 after her contract with the respondent ended. I have summarised the nature of this claim in paragraph 4. The claimant included this claim in her ET1 and based on the statutory arrangements set out in paragraph 25 above it was brought in time.

Approved by Employment Judge Harrison

7 July 2026

JUDGMENT SENT TO THE PARTIES ON

9 July 2026

FOR THE TRIBUNAL OFFICE

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