EMPLOYMENT TRIBUNALS

Claimant: Mrs M Ball

Respondent: Warrior Link Limited

Heard at: Leeds (by video) On: 18 November 2024

Before: Employment Judge T Knowles

Representation
Claimant: Ms R Paterson, Counsel
Respondent: Mr L Hollingworth, Managing Director

RESERVED JUDGMENT ON A PRELIMINARY POINT

The Judgment of the Tribunal is that:

1. The Claimant was in the Respondent's employment for the purposes of the Equality Act 2010.

2. The Claimant was a worker engaged by the Respondent for the purposes of the Employment Rights Act 1996.

RESERVED REASONS

Issues

1. The issues to be determined today were set down by Employment Judge Ayre at a preliminary hearing for case management which took place on 29 April 2024.

2. These are:

    a. Decide whether the claimant was an employee of the respondent within the meaning of section 83 of the Equality Act 2010?

    b. Decide whether the claimant was a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

c. Discuss what further hearings are required and fix a date for any further hearings; and
d. Make such Case Management Orders as the Employment Judge considers appropriate.

Evidence

3. This case was undertaken using HMCT's cloud video platform.

4. The Claimant produced a bundle of documents, 125 pages. References in this Judgment and Reasons to numbers in brackets are to pages in that bundle unless otherwise stated.

5. The Claimant gave evidence under oath and produced a written witness statement.

6. Mr Hollingworth, who is the Respondent's Managing Director, gave evidence under oath and produced a written witness statement.

7. The Respondent produced some other witness statements, but it was agreed that these related to the Claimant's discrimination and wages claims as opposed to her status. For that reason, those other statements were not considered.

Findings of fact

8. I made the following findings of fact on the balance of probabilities. This is not intended to cover all of the evidence that I heard and read. These are the key points which explain my decision and reasons.

9. The Respondent is a haulage company which serves the South Yorkshire region.

10. Before working for the Respondent, the Claimant had recently qualified as a Class 1 HGV driver.

11. She had not previously been engaged in self-employment as an HGV driver. She was a new driver. She had no established business as an HGV driver. She was simply newly qualified and looking for work. She had family commitments as a single mother and was seeking part-time employment as a driver to fit around those family commitments.

12. The Respondent needed a driver. Mr Hollingworth wrote and placed an advert himself on or around 4 August 2023 on the "Indeed" website (45-51), describing the role vacant as "HGV C+E Driver (Days). This provided for an immediate start, 8 hour shift, Wednesday, Thursday and Friday. It states that a new vehicle is provided along with fuel and insurance. It listed benefits as no hassle, fuel, vehicle, sat nav, PPE, insurance and uniform provided at no cost, excellent rates of pay and daily performance incentives, possibility of additional working days available per week, familiarisation training provided and a minimum night rate. In terms of duties, the advertisement provided that "your daily routine may include trunking, shunting, collections, updating customer of route progress / delays etc". It went on to state that as a new company customer service is at the forefront of all you do and this should be reflected in a courteous attitude and tidy appearance. There were qualification requirements other than appropriate licencing.

13. The advertisement states "Application question(s): Are you aware that this is a selfemployed role". The Claimant answered yes to that question. Indeed, it is only the question itself that provides a reader of the advertisement with notification of that fact.

14. The Claimant applied for the role. The Claimant has not disputed awareness that the arrangements expressly on offer were those of self-employment, leaving aside whether or not those were the true arrangements.

15. On 9 August 2023 Mr Money, Fleet and Compliance Manager from the Respondent, contacted the Claimant and they exchanged text messages (86) and arranged an initial drive where the Claimant would be accompanied and shown the route. That took place on 11 August 2023.

16. After some discussion the Claimant's working days were agreed as Wednesday to Friday, and the rate of pay £15 per hour.

17. The Respondent uses an application named "Wise" through which it manages the people it engages. This is used to communicate policies and agreements.

18. On 29 August 2023 the Claimant signed, through the Wise application, to acknowledge receipt of the Health and Safety Arrangements and Procedures document, Health and Safety Policy, Harassment and Bullying Policy, Drug and Alcohol Testing policy and a document entitled "NDA", meaning a non-disclosure or confidentiality agreement.

19. When the Claimant began working for the Respondent, 30 August 2023, she was initially accompanied by another driver, Nick. That also happened the following day, 31 August 2023.

20. Mr Hollingworth was at pains to describe this as simply help arranged for the Claimant because she was a newly qualified HGV driver. Whenever these shifts were described to him as training he would correct that to "support". It appeared to me that it is possible that Mr Hollingworth feared any suggestion that they had trained the Claimant as that might negate his argument that the Claimant was fully self-employed. It matters little whether what took place on 11 August, 30 August and 31 August 2023 are described as support or training as by any definition the supervised runs were clearly both training and support.

21. The Claimant first drove alone on 1 September 2023.

22. The Claimant was given uniform including, at least, a poloshirt and baseball cap which were branded with the Respondent's logo.

23. The Claimant drove the vehicles supplied by the Respondent, and was trained and supported on how to operate them.

24. The Claimant made the collections and deliveries that the Respondent instructed her to do. The Claimant had to keep in contact with the Respondent and in particular inform them if she had any problem which may inhibit visiting a client at a required time in order that the Respondent could make alternative arrangements. One of the Respondent's clients had an inflexible time slot to be honoured. The messages between the Respondent's managers and the Claimant clearly show that she had to report regularly and was being monitored carefully and consistently.

25. Mr Hollingworth suggested in evidence that the Claimant was free to work or not to work as she chose, and could perform the work when she chose. However, the messages between the Claimant and the Respondent's managers clearly show that she had fixed times and days of work, fixed runs, and was required to perform and check in according to the Respondent's schedule.

26. On 8 September 2023, after the Claimant had undertaken 6 days of work for the Respondent plus the paid initial familiarisation day, Mr Hollingworth advised her by whatsapp (77) that in order for him to me able to pay her she needed to sign the Service Level Agreement. This has not appeared on the Wise app for the Claimant to sign up until then.

27. In evidence today Mr Hollingworth suggested that the agreement had been sent earlier and it was the Claimant who denied sending it. However the text messages in the bundle are clear, the agreement was not visible to the Claimant on the Wise application when Mr Hollingworth asked the Claimant to sign it on 8 September 2023.

28. The Claimant had to ask Mr Holingworth what an SLA was.

29. I note how this was presented to the Claimant. She had already been working for the Respondent for 6 days when she is required to sign the agreement. She is only then told unless she signs this she cannot be paid. This is a clear indicator of the relative bargaining power of the parties.

30. The Claimant signed the Service Level Agreement (SLA) on 10 September 2023.

31. The SLA is titled "contract for provision of services (self-employment). It is expressed to be between the Claimant and the Respondent. The Claimant is termed a "supplier".

32. The SLA contains various provisions, and I copy here a few:

BACKGROUND

A. The Company's business is in driving and delivery services which it provides to its clients at various sites and locations.

B. The Supplier, as an independent business, provides professional driving services ("the Services") and as such skills and abilities may from time to time be available to the Company.

…

OPERATIVE PROVISIONS

1.Both parties agree and intend that if and when the Supplier agrees to provide services to the Company he is engaged as an independent business in his own right under a contract for services and not a contract of employment or any other kind of contract.

2.The Company is under no obligation to, and provides no guarantee it will, offer or provide the Supplier with any work whatsoever.

3.The Supplier is under no obligation to accept any offer of works which may be made available by the Company or make his / her services available to the Company at any time. The Supplier is free to decline to provide any services at any time for any reason.

4.The Supplier agrees that if it provides services to or on behalf of the Company he will do so in a professional way.

5.As an independent business, with the exception of Para 6, the Supplier is free to decide how he provides the Services, and will not be subject to supervision, direction or control, or any right thereof, as to the manner in which he provides the Services.

6.The supplier agrees to abide by EU drivers hours rules and Domestic WTD whilst providing services and agrees to ensure compliance throughout its provision.

7.The Supplier is free to provide services to any other parties at any time, and the Company acknowledges it does not have first call on the Supplier's services. For smooth delivery of the Services, however, the Supplier agrees he will observe overall agreed timescales and deadlines of the Company.

7.[sic; numbering] The Supplier is responsible for his / her own equipment. However due to the nature of the services the Company has secured provision of such necessary equipment, from its client, as may be necessary for the smooth delivery of the services.

8.The Supplier is responsible for the cost of maintaining, and keeping up to date, his own valid insurances and licenses necessary to perform the Services and will provide such documents as may be required by the Company to confirm this is the case.

9.The Supplier should provide the Services to the best of his / her abilities and to the standard expected of a comparable professional service provider.

10. The Supplier acknowledges he / she must be contactable at all times during the provision of the Services to ensure smooth delivery of the Services.

11. In order for the Company to meet its obligations the Supplier is responsible for ensuring any such vehicles used meet the requirements of the attached schedule.

12. Due to the nature of the Services the Supplier acknowledges he / she is responsible for understanding and following the health and safety requirements necessary to perform the Services.

13. The Supplier is responsible for ensuring it has all the relevant and correct information to enable it to undertake the Services including correct times, locations and customer details.

14. Due to the nature of the Services provided the Supplier acknowledges that the Company's Client has its own Equipment for confirming the status of deliverables and the Supplier ensures he / she is fully capable of utilising this Equipment. The Supplier is liable for any and all damage caused to any Equipment used by the Supplier in the performance of the Services, to the extent damage was caused as a result of the actions of the Supplier.

15. In order for the Company to meet its agreed Service level obligations with its client, the Supplier agrees to follow the conditions laid out in the schedules of this contract for services.

16. If applicable, the Supplier agrees that the Company may deduct from any sums payable any sums that the Supplier may owe the Company, in respect of, and where applicable:

• Vehicle damage caused by negligence of the supplier.

SUBSTITUES & HIRED ASSISTANTS

17. The Supplier is free to send a suitably skilled and qualified substitute or hired assistant in his / her place to provide the services at any time.

18. Where a substitute or hired assistant is sent by the Supplier there shall be no contractual or financial relationship between the Company and the substitute or hired

assistant. The Supplier is solely responsible for arranging payments to the substitute or hired assistant and for ensuring such persons possess the necessary skills, qualifications and licences to perform the Services. Evidence of suitability should be received by the Company no later than 48hrs prior to the provision of the substitute or hired assistant.

19. If, and only if, the Company is not reasonably satisfied the substitute or hired assistant has the necessary skills or qualifications to provide the Services it may reject the use of such substitute or hired assistant.

PAYMENT FOR SERVICES

20. The parties agree that the rate for the Services and the method of payment may be negotiated and agreed between them from time to time. At the time of this agreement, the fee for the agreed services is set at £110 + VAT per day.

21. On termination of this engagement, The Supplier's final two weeks pay will be held for a period of one month to offset the cost of any claims that come in against them.

22. The Supplier is liable up to £2000 for vehicle damage, damage to a third party's vehicle and / or property

…

28. The Supplier will only be paid if the full induction period has been completed. If The Supplier does not progress onto full routes, or wished to terminate the engagement, The Company will not be liable to pay for any days The Supplier has complete up to that point.

29. The Supplier is responsible for his own Tax and National Insurance Contributions.

…

31. The Supplier is engaged as a self-employed Supplier and understands and agrees he is not entitled to any statutory payments such as holiday pay, sick pay, maternity/paternity pay or any other payment of any kind.

HEALTH & SAFETY

32. While the Supplier’s method of work is his own, the Supplier agrees, that in the interests of Health and Safety obligations imposed on the Company, he will follow such reasonable operational rules relating security, road safety and applicable national and local laws and bye-laws in so far as they are reasonable applicable to independent persons in business on their own account.

33. The Supplier will not hold himself out to be an employee or representative of the Company, save as both parties acknowledge for health and safety or security purposes the Supplier may need to be identifiable as a Supplier of the Company.

…

33. In evidence today, Mr Hollingworth told me that the reason the Service Level Agreement was necessary was that it was to confirm self-employment.

34. Mr Hollingworth did not dispute, when questioned, that the purpose of the agreement was to protect the Respondent from liabilities they may otherwise have if they were the employer of the other party.

35. The Claimant produced invoices to the Respondent for payment.

36. The Respondent claims that the Claimant had some issues at work in the sense that she caused damage to the vehicles. However, subsequently Mr Hollingworth had assessed her driving as a result of these issues and found the Claimant to be competent.

37. Mr Hollingworth sent some instructions to the Claimant about what to do if held up on a job on 21 September 2023. He also asked Mr Money to send the same instruction to her, despite having sent them himself.

38. The Claimant responded "you text me then Paul straight after, can you please sort this communication issues, its hounding and ridiculous, I'm driving. I'm sure this vehicle has a tracker. You know I'm driving" or words to that effect.

39. Later that day, the Claimant feels unwell and messages Mr Hollingworth to ask if another of the Respondent's drivers, Nick, can cover her work the following day.

40. Mr Hollingworth decided the Claimant would be told, to quote from his witness statement, "in return that we didn't require her services going forward". The decision was confirmed to the Claimant by Mr Money by telephone.

41. Mr Hollingworth disputed in questioning today any suggestion that the reason for terminating the Claimant's contract was the Claimant's notification that they try to arrange cover for her the following day. He says instead that it was her negligence (in damaging vehicles) and her gross misconduct. The gross misconduct he explained to be her attitude on the day when they were trying to assist her. He described the Claimant as flippant and disrespectful. He described the request to find someone else to drive the following day as the straw that broke the camel's back.

42. 21 September 2023 was therefore the Claimant's last day of work for the Respondent.

43. In my conclusion the principal reason why Mr Hollingworth terminated the Claimant's contract was her indication that she could not work on 22 September 2023. The negligence he has referred to was minor damage to vehicles which had caused him to assess her driving personally and he assessed her as competent. Mr Hollingworth took no action concerning the message sent by the Claimant on 21 September 2023, and has not explained why he considered that to be gross misconduct. The message from the Claimant is simply factual and refers to shortcomings in the Respondent's practice of communicating with drivers by text messages whilst they are driving. In my conclusion on the balance of probabilities, Mr Hollingworth is simply adding negligence and gross misconduct as the reasons for termination after the event because he fears that termination for indicating that she would be unable to work the following day would be detrimental to his case that the Claimant was self-employed.

Submissions

44. The Respondent submitted that the Claimant's claim is part of a vendetta by her against them. The Claimant provided her services for less than 4 weeks. The Claimant asked for assistance as a new driver and they agreed to provide her some support. The Claimant acknowledges that she thought she was self-employed. It was only on termination that she chose to challenge that status. The Claimant had an accountant, was VAT registered and had run a small business before. The Claimant sent invoices to the Respondent. The Respondent was her customer. The Claimant could send a replacement for her services. None of their other drivers have questioned their engagement status. The uniform provided identifies who she represents not who employs her. The principal reason for termination was negligence and gross misconduct.

45. The Claimant provided a written skeleton argument.

46. Those written submissions were supplemented by verbal submissions.

47. The Claimant submitted that she is claiming to be a "limb B" worker, the category of self-employed people who provide their services as part of a profession or business undertaking carried on by someone else. The Claimant provided services to the Respondent as part of their business undertaking to provide haulage to their clients. Only the SLA questions this, because this is set out as if the Claimant is solely self-employed, in business on her own account and undertaking work for her clients or customers. The Claimant notes that the SLA was not signed until 10 September 2023, some time after she began providing services. Her actual contract with the Respondent was formed by their previous verbal and written exchanges. The SLA is not consistent with the agreement between the parties, for example the rate of pay was agreed at £120 per day not £110 as is set out in the SLA. The SLA refers to provision of equipment by the Claimant whereas the equipment was actually provided by the Respondent. She drove their vehicles, used their systems, wore their unfirm and they provided fuel and a sat nav system. The agreement is not the appropriate starting point and any provisions which have as their objective to preclude employment rights is void. The Respondent agreed that the purpose of the agreement was to protect the Respondent from employer liabilities. The Claimant submits that the agreement was for personal service and any substitution would not have been accepted. The Claimant was integrated into the Respondent's business. Whilst the Respondent states that they gave support simply because the Claimant was a new driver and requested support, the Respondent's response suggests that all suppliers are assessed and accompanied by a driver familiar with the route. There was a commitment to provide training. The Respondent states that it invested £1,000 supporting the Claimant, which is consistent with employment or limb B worker, not with full selfemployment. The Claimant was, at least, a limb B worker meaning she was a worker under the Employment Rights Act 1996 and an employee for the purposes of the Equality Act 2010.

The Law

48. Section 83 of the Equality Act 2010 provides that:

> 83 Interpretation and exceptions
>
> (1) This section applies for the purposes of this Part.
>
> (2) "Employment" means—
>
> (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

49. Section 230 of the Employment Rights Act 1996 provides that:

> 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.

50. In this case the Claimant is asserting that she was employed under a contract personally to do work for the purposes of Section 83(2)(a) and, for the purposes of Section 230, undertook to perform personally work or services for another party to the contract whose status is not be virtue of the contract that of a client or customer of any profession or business undertaking carried out by the individual.

51. Case law has already established that there is no real difference between the two definitions that the Claimant is seeking to rely on in this case.

52. Baroness Hale of Richmond in Bates van Winkelhof v Clyde & Co LLP [2014] UKSC 32; [2014] 1 WLR 2047 summarised the distinction between different types of people undertaking work as follows:

(1) Individuals employed under a contract of employment;

(2) Workers who are self-employed but who provide their services as part of a profession or business undertaking carried on by someone else; and

(3) Self-employed individuals who are in business on their own account and undertake work for their clients or customers.

53. To establish protection an individual must establish that they have a contract with an organisation.

54. A contract is formed by offer and acceptance. The offer is a proposal from one party which is: sufficiently definite in its terms to form a contract, capable of acceptance and made with the intention of being bound by acceptance. Acceptance is a statement (in writing or verbal) or conduct by an offeree indicating assent to the offer. The assent must be unqualified.

55. To form a contract there must be: agreement on essential terms, intention to create legal relations and certainty of terms. In general, the essential terms are: the parties to the agreement, the subject-matter of the contract, and the price or the mechanism for pricing arrangements. There must be an intention by the parties to create a legally binding arrangement. Where no such intention can be attributed to the parties, there is no contract.

56. In considering the question of worker status, the primary focus should be on the relevant statutory wording (Uber & Others v Aslam & Others [2021] UKSC 5).

57. There must be an obligation to perform work personally and the existence or otherwise of a right of substitution must be considered as this may indicate that the contract did not require personal performance.

58. The Court of Appeal summarised the principles on personal service and substitution in a case considering limb B workers, Pimlico Plumbers Ltd and anor v Smith 2017 ICR 657, CA (a decision upheld on appeal by the Supreme Court in Pimlico Plumbers Ltd and anor v Smith 2018 ICR 1511, SC). Sir Terence Etherton MR, giving the leading judgment, noted that an unfettered right to provide a substitute is inconsistent with an undertaking to provide services personally, while a conditional right to provide a substitute may not be — it depends on the degree to which the right is limited or occasional. In his view, the case law shows that a right to substitute only when the contractor is unable to carry out the work is consistent with personal performance (subject to any exceptional facts); a right to substitute limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, is inconsistent with personal performance (subject to any exceptional facts); and a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent is consistent with personal performance.

59. When considering worker status, a focus upon whether the purported worker actively markets his services as an independent person to the world in general on the one hand, or whether he is recruited by a principal to work for that principal as an integral part of the principal's operations, will in most cases demonstrate on which side of the line a given person falls (Cotswold Developments Construction Ltd v Williams [2006] IRLR 181).

60. Furthermore, a relevant question will be whether, on the one hand, the person concerned performs services for and under the direction of another person in return for which he or she receives remuneration or, on the other hand, he or she is an independent provider of services who is not in a relationship of subordination with the person who receives the services (Hashwani v Jivraj (London Court of International Arbitration intervening) [2011] ICR 1004).

61. Tribunal's must look beyond the terms of the written contracts where they do not represent the true agreement between the parties (Autoclenz Ltd v Belcher and ors [2011] ICR 1157 SC). Any clauses or provisions in a written agreement which can be seen to have as their object precluding the Claimant from claiming rights conferred on workers by the applicable legislation are void (Uber BV and others v Aslam and others [2021] UKSC 5).

Conclusions

Was there a contract?

62. There appears to be no dispute between the parties that there was a contract between them.

63. This is not an agency case. There are no third parties involved in the contractual arrangements.

64. The Respondent would has suggested that the agreement is the SLA.

65. In reality a contract had subsisted between the parties before then. It was formed on or around 14 August 2024, after the initial familiarisation run, when the Respondent offered the Claimant work. The contract's essential terms were that the Claimant would work Wednesday to Friday at £120 per day gross under self-employed arrangements, she would work as a driver, on duties prescribed by the Respondent and using their equipment under their policy of insurance. The other terms set out in the Indeed advertisement were part of the agreement between the parties. The Respondent sought to put those terms into effect when offering the Claimant the role.

66. Both parties are in agreement that the contract was one of self-employment. The Claimant has indicated that she may well have had an argument that the contract was one of

employment rather than self-employment but has abandoned that argument because she does not need to establish employment for her claims for wages and discrimination to proceed further, she only needs to establish herself as a limb B worker.

67. I will deal with the impact of the SLA, agreed after work commenced, upon the relevant terms of the agreement between the Claimant and Respondent when looking at the issue of personal service below. It is not necessary to deal with this at this stage when considering whether or not there was a contract between the parties. It is clear that there was, regardless of the dispute between the parties as to the degree of incorporation of the additional terms which the Claimant signed on 10 September 2023.

Was it a contract which required personal service?

68. In my conclusion the Claimant's contract was the verbal and written terms which were agreed between her and the Respondent on or around 14 August 2023 prior to the additional terms which were signed for by her on 10 September 2023.

69. There was no question of substitution prior to 10 September 2023. It had not been mentioned by either party and cannot have formed part of the contract between them when the Claimant began work. It is not necessary to imply such a term into the agreement that they had reached on or around 14 August 2023. The parties were free to and had agreed that the Claimant would provide work for the Respondent personally as a self-employed person.

70. I do not consider that that the SLA sent to the Claimant on 10 September 2023 varied the agreement between the Claimant and the Respondent which was already in place.

71. I take into account that the agreement is presented to the Claimant by the Respondent with the ultimatum that it must be signed by the Claimant otherwise she will not be paid for work which she has already provided to the Respondent.

72. I take into account that the Claimant did not understand what the agreement was and had to ask the Respondent. This demonstrates that the Claimant already felt she had an agreement to work and was not expecting further terms to be introduced into their agreement after she had begun working.

73. I take into account the wording of the agreement. It does not provide an unfettered right to provide a substitute. It requires the Claimant to send evidence to the Respondent of necessary skills, qualification and licences to perform the work at least 48 hours before the person is supplied. It provides a right to the Respondent to reject if it is not "reasonably satisfied".

74. It appeared to me that the wording concerning substitution did not reflect the arrangement for work which was actually in place between the parties. Undertaking the work required familiarisation training. It would not be possible for a new driver to simply arrive and perform the services without any supervision.

75. Considering those conclusions in the round I conclude that the contract is not inconsistent with a contract for personal service.

76. I take into account that the agreement is more generally one which appears to have as its primary purpose avoiding creating a contract of employment.

77. I take into account Mr Hollingworth's confirmation that the primary purpose is such.

78. I take into account what happened when the Claimant indicated that she may not be able to work on 22 September 2023; her contract was terminated.

79. Were I wrong on my conclusions that the contract is not inconsistent with one for personal service, in my conclusion the terms concerning substitution are void as they have a prohibited purpose (Autoclenz and Uber applied).

80. In my conclusion, the Claimant's contract for self-employed services required her personal service throughout her engagement with the Respondent.

Was the Respondent a customer or client of any business undertaking or profession carried on by the Claimant?

81. There is no material evidence before me that the Claimant was carrying out any business undertaking or profession.

82. The Claimant did not market her services to anyone.

83. She had no other clients. Her sole agreement was with the Respondent.

84. There is no evidence that the Claimant owned or provided any equipment in providing work to the Respondent.

85. The Claimant's work hours and the monitoring of her work are indicative of an insubordinate relationship.

86. The Respondent referred to her negligence and gross misconduct in a masterful manner.

87. The Claimant had no freedom to accept or decline work whenever she chose. The moment she enquired whether or not someone could cover her work the following day her contract was terminated by the Respondent.

88. The Claimant's contract was one designed simply to avoid the liabilities that come with the engagement of a person as an employee.

89. In my conclusion the Respondent was not a customer or client of any business undertaking or profession carried on by the Claimant.

Section 83 conclusion

90. In my conclusion, the Claimant was employed under a contract personally to do work for the purposes of Section 83 of the Equality Act 2010 and was therefore in employment for the purposes of that Act.

Section 230 conclusion

91. In my conclusion, the Claimant was an individual who entered into or worked under an express contract whereby she undertook to do or perform personally work as a HGV driver for the Respondent who was not a client or customer of any profession or business undertaking carried on by the Claimant. The Claimant was a worker for the purposes of the Employment Rights Act 1996.

Employment Judge T Knowles
26 November 2024

RESERVED JUDGMENT & RESERVED REASONS
SENT TO THE PARTIES ON

2nd December 2024

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislationpractice-directions/