Case Number: 6009502/2025

EMPLOYMENT TRIBUNALS

Claimant: Ms da Silva

Respondent: (1) Staffline Recruitment Ltd
(2) BMW (UK) Manufacturing Ltd

Heard at: Reading **On:** 11 September 2026

Before: Employment Judge Shastri-Hurst

Representation
Claimant: in person
Respondent 1: Mr Symons (solicitor)
Respondent 2: Mr Allsopp (counsel)

JUDGMENT having been handed down to the parties at the hearing on 11 September 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

FULL WRITTEN REASONS

1. The first respondent ("Staffline") is a provider of flexible, temporary and permanent workers.

2. The second respondent ("BMW") is a client of Staffline to whom Staffline supplies temporary workers. The arrangement between Staffline and BMW is set out in the Agreement for the Supply of Direct Temporary Workers at page 206 of the bundle ("the Service Agreement").

3. The claimant was engaged by Staffline under a contract dated 25 July 2024, and commenced an assignment with BMW at its Oxford plant on 29 July 2024. The claimant was released (or "de-manned") from that assignment on 18 March 2025, with one week's notice being given.

4. By claim form dated 19 March 2025, the claimant presented her claims of:

    4.1. Unfair dismissal; and,
    4.2. Disability discrimination.

5. Prior to filing her ET1, the claimant had not undertaken the ACAS early conciliation process. As such, her disability discrimination claim was

rejected on 8 April 2025. The claimant applied for that decision to be reconsidered: that application was rejected by Employment Judge Anstis.

6. The respondents duly entered their respective ET3s and Grounds of Resistance. Staffline accepted it was the claimant's employer but denied she had the requisite length of service to present an unfair dismissal claim. BMW denied that it was the claimant's employer.

7. The claimant applied for interim relief. That application was refused at a hearing on 13 May 2025, the order being sent to the parties on 30 May 2025 - [44].

8. The case was listed for a public preliminary hearing on 5 May 2026. Unfortunately, no Portuguese interpreter was available to assist the claimant. As such, Employment Judge George postponed the hearing and relisted it for today.

9. That hearing, and therefore this one, was listed in order to consider the issues set out below.

10. In order to assist in determining those issues, I have the benefit of a bundle of 222 pages. I also have witness statements from the following individuals:

    10.1. Claimant;
    10.2. Jamie Baugh – Regional Support Manager at Staffline;
    10.3. Holly Chalmers – Leadership Partner, Manager at Plant Oxford employed by BMW.

Issues

11. The issues for consideration at this hearing are as follows:

    11.1. Was the claimant an employee of Staffline? If not, should any complaints against Staffline be dismissed or struck out?

    11.2. Was the claimant an employee of BMW? If not, should any complaints against BMW be dismissed or struck out?

    11.3. Was the claimant continuously employed (as defined in the Employment Rights Act 1996) for a period of at least 2 years prior to termination of employment? If not, should any complaint of unfair dismissal be dismissed because of section 108 Employment Rights Act 1996 ("ERA") (the requirement to have been employed for 2 years in order to have unfair dismissal rights, unless an exception applies).

Findings of fact

12. As above, the claimant started working at BMW's Oxford plant on 29 July 2024 until she suffered an accident at work on 13 March 2025, from which point she was absent from work on sick leave.

13. The claimant had worked at BMW previously, via an agency called GI Group in 2022. At some point, the contract under which the claimant was engaged moved from GI Group to Staffline. That period of work ceased in October 2022 - [84]. The claimant was sent her P45 by Staffline for that period of work.

14. The claimant returned to the BMW Oxford site in March 2023. That period of work ended in November 2023: the claimant and several others were released from their working arrangement with BMW at the same time - [116]. Again, Staffline sent a P45 for this period - [120].

15. In May 2024, the claimant contacted Staffline because she was looking for work - [178]. Following that approach, the claimant entered into a new contract with Staffline entitled "BMW Contract of Employment Agreement" ("the Contract"), receiving that contract on 25 July 2024 - [146]. The claimant started back at work at the BMW Oxford site on 29 July 2024 - [143]. Under the Contract, the date of 29 July 2024 was the beginning of the claimant's continuous employment - [125] clause 3.1/3.2. The claimant accepted in cross-examination that this was her start date, having asserted the same in her claim form and witness statement for an earlier interim relief hearing. On starting work again in July 2024, the claimant was given the BMW Key Information Document at [141]. This document records that the name of the employment business was Staffline and under "your employer (if different from the employment business)", "N/A" is recorded. The claimant accepted that she was notified that her employer was Staffline.

16. Throughout her three periods of work with BMW and Staffline, the claimant had the same personnel number on BMW's system: see for example [157], number 537419 by the claimant's name. The claimant raised this point in support of her apparent contention that her employment with Staffline spanned all three periods of work. I accept the respondents' evidence that this number is just an identification metric to allow BMW to identify staff members, particularly useful where staff members have the same or similar names.

17. The claimant was paid by Staffline, and I have seen examples of payslips in the bundle – for example [181]. She never received any payslips from BMW. Staffline were also responsible for Statutory Sick Pay - [169].

18. It was however BMW that provided the uniform. Furthermore, the claimant was integrated in, and worked day to day at, Plant Oxford. She did not work in the Staffline office.

19. On 18 March 2025, Ms Molnar at Staffline emailed the claimant to inform her that she was being "de-manned" - [158]. The attachment to that email at [159] set out that the claimant was being given 1 week's notice and that her last working day would be 24 March 2025.

20. In terms of the need to reduce headcount at Plant Oxford, that decision was taken by BMW, in consideration of the amount of production volume it had. Generally, when there is less demand for production, BMW communicates to Staffline that it needs to reduce headcount by a certain number of individuals. Staffline then makes those cuts with reference to length of

service: for example, see [157]. The claimant appealed the decision to terminate her contract to Staffline.

21. During the claimant's cross-examination, she accepted that at no point was BMW her employer.

22. As part of this litigation process, and in advance of this hearing, BMW wrote to the claimant to seek details of any employment the claimant had outside of her periods of work with BMW - [196]. Specifically, BMW asked for details of any employment/other engagements the claimant had between the following dates:

    22.1. 29 October 2022 to 12 March 2023; and
    22.2. 21 October 2023 and 28 July 2024.

23. The claimant did not reply to that request, and has not provided any evidence of any other engagements in those periods (or in any periods).

24. The claimant was asked in cross-examination, and by me, about any engagements she had in those two periods. In terms of 29 October 2022 to 12 March 2023, the claimant said she worked part-time in a restaurant whilst working for BMW with Staffline and then, when she was de-manned, she asked for more hours at the restaurant but that did not end up happening. Regarding the second period of 21 October 2023 to 28 July 2024, the claimant said she worked at Oxford Brookes University part-time, working 20 hours a week.

Legal framework

Employee status

25. The relevant section of the Employment Rights Act 1996 ("ERA") is s230(1), which defines employee as follows:

> 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

26. Contract of employment is defined as follows under s230(2) ERA:

> 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 written.

27. It was held in Patel v Specsavers Optical Group Ltd EAT 0286/18 that "it is a well-established principle of employment law that in general terms one employee cannot simultaneously have two employers".

28. The starting point regarding employment status is the "multiple test" as set out in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433 QBD, in which Mr Justice Mackenna held:

> 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 or 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.

29. In the index scenario, it is necessary to consider the tripartite relationship between the claimant, an employer and an end user. In Smith v Carillion (JM) Ltd (Secretary of State for Business, Innovation and Skills Intervening) 2015 IRLR 467, CA, it was held at paragraph 21 that:

> "The question a Tribunal needs to ask is whether it is necessary, having regard to the way in which the parties have conducted themselves, to imply a contract between worker and end user".

30. This remains the case, however well integrated into the end-user's business a claimant may be. For example, in the case of Tilson v Alstom Transport [2011] IRLR 169, Elias LJ held that, but for the agency relationship between the claimant and an employment agency, the parties' relationship would have been a contract of service, given the level of control and mutuality of obligations that existed between the parties. However, to imply such an employment relationship would have been to ignore the agency arrangements in place. The Court of Appeal held that it was not necessary to imply a contract of service because the contracts that did exist between the agency, the claimant and the respondent fully explained the tripartite relationship. At paragraph 44, Elias LJ held:

> "...the mere fact that there is a significant degree of integration of the worker into the organisation is not at all inconsistent with the existence of an agency relationship in which there is no contract between worker and end user."

31. The specific case of a tripartite relationship was considered in James v Greenwich London Borough Council [2008] EWCA Civ 35. *Per* Mummery LJ at paragraph 30:

> "In the agency worker cases the problem in implying a contract of service is that it may not be necessary to do so in order to explain the worker's provision of work to the end user or the fact that the end user's payment of the worker via the agency. Those facts and the relationships between the parties are explicable by genuine express contracts between the worker and the agency and the end user and the agency, so that an implied contract cannot be justified as necessary".

Continuous service

32. S211 ERA provides:

> (1) An employee's period of continuous employment for the purposes of any provision of this Act –

a. ... begins with the day on which the employee starts work, and
b. ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

33. S212 ERA provides as follows:

(1) Any week during the whole or part of which an employee's relationship with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) ...

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is –

a. Incapable of work in consequence of sickness or injury,
b. Absent from work on account of a temporary cessation of work, or
c. Absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,
d. ...

Counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under subsection (3)(a)...between any periods falling under subsection (1).

Conclusions

Identity of employer

34. The starting point is the Contract between the claimant and Staffline. I have also seen a redacted contract between Staffline and BMW (the Service Agreement). Taken together, those two contracts explain the working relationship between the three parties.

35. Although I have found that the claimant was integrated into work at BMW's site, under the case-law set out above that does not require a contract of employment to be inferred. I am only able to conclude that there is an implied contract of employment between BMW and the claimant if it is necessary to explain the relationship between the three parties.

36. In this case, the tripartite relationship is explained fully by the Contract and Service Agreement within the bundle. It is in fact a classic tripartite relationship: an individual is employed via an employment agency that places them with an end user.

37. There is therefore no necessity for me to imply a contract of employment between the claimant and BMW to explain the relationship between the three parties.

38. The claimant on a few occasions said words to the effect that she considered both respondents to have been her employer. As above, it is an established point of law that one can only have one employer for the same job. As such it is not possible for both BMW and Staffline to be the claimant's employer.

39. I conclude that Staffline was the claimant's employer.

Continuous service

40. The claimant worked for Staffline and BMW across three periods:

    40.1. 22 October 2021 to 28 October 2022;
    40.2. 13 March 2023 - 20 October 2023;
    40.3. 29 July 2024 - 24 March 2025.

41. As confirmed in their evidence to me, all parties agreed that the claimant's start date for continuous employment was defined by reference to the Contract. Furthermore, it transpired to be common ground that this definition was consistent with the claimant's start date for continuous employment being 29 July 2024.

42. Further, the claimant worked for 20 hours a week for another entity immediately prior to her third period of employment with Staffline. That undermines any argument that the claimant's continuous employment started any time before 29 July 2024.

43. I conclude that, during the time when the claimant was not at work for BMW and Staffline, she was not subject to an employment contract with Staffline. Generally, for periods in which there is no employment contract, there is a break of continuity.

44. This is not a case which fits within one of the exceptions in s212(3). The only one that could even possibly be said to apply is the temporary cessation of work limb. However, these facts simply do not fit within that label, not least because the length of the gaps between employment are not dissimilar to the periods within employment. The gaps cannot be said to be short, when one considers the combined periods of when the claimant was working at Plant Oxford and when one considers all the circumstances of the case.

45. The claimant raised the fact that her personnel number was the same throughout her various periods of employment. As above, I accept the respondents' evidence that this number is just an identification metric to allow BMW to identify staff members. I consider it has no bearing on the facts relevant to her length of service.

46. I therefore conclude that the claimant started work in terms of continuity of employment on 29 July 2024 and therefore did not have two years' service at the time of her dismissal.

47. As such she does not have qualifying service under s108 ERA, and her claim of unfair dismissal is dismissed accordingly.

Approved by:

Employment Judge Shastri-Hurst

Date: 14 October 2026

JUDGMENT SENT TO THE PARTIES ON

31 October 2026

FOR THE TRIBUNAL OFFICE