Neutral Citation Number: [2026] EAT 175

Case No: EA-2024-001565-JOJ
EA-2025-000040-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11 November 2026

Before :

HIS HONOUR JUDGE JAMES TAYLER
(DEPUTY PRESIDENT)

- -

Between :

Janna Linde

Appellant

- and -

University of East London

Respondent

- -
- -

Stefan Liberadzki (instructed by through direct access) for the **Appellant**
Richard Hignett (instructed by Mills & Reeve Solicitors) for the **Respondent**

Hearing date: 29 October 2026

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JUDGMENT

SUMMARY

Race Discrimination

The Employment Tribunal erred in law in finding that there was no contract between the claimant and the respondent, so that she could not be an employee for the purposes of section 83 Equality Act 2010.

HIS HONOUR JUDGE JAMES TAYLER, DEPUTY PRESIDENT

The issue

1. The issue in this appeal is whether the Employment Tribunal erred in law in holding that the claimant was not an employee of the respondent, primarily on the basis that there was no contract between them.

The judgments appealed

2. The appeal is against a judgment of Employment Judge Jones, sitting with members after a hearing on 9 to 11 January and in chambers on 19 February 2024 at the East London Hearing Centre. The judgment was sent to the parties on 28 October 2024.

3. An application for reconsideration was refused by a judgment sent to the parties on 12 December 2024. The claimant also appeals against the refusal of reconsideration.

The outline facts

4. The respondent offers social work courses at undergraduate and postgraduate level. The claimant is a former student of the respondent, having undertaken a Masters' course in Post-Qualified Professional Practice, completed at the end of the academic year in 2019/20.

5. The Richmond Fellowship is a charity and voluntary sector provider of mental health services. The claimant has been employed by the Richmond Fellowship since 2013, providing holistic support to vulnerable people recovering from mental illnesses. The Richmond Fellowship provides placements for students of the respondent. When undertaking a placement a student of the respondent may be provided with a Practice Educator paid for by the respondent.

6. During her masters degree the claimant had acted as a Practice Educator for a student during the 2018/2019 academic year ("the 18/19 assignment") and it would appear also for the 2019/20 academic year ("the 19/20 assignment").

7. The Employment Tribunal held that the claimant made a claim for payment for the 2019/20 academic year on 31 May 2020. The claimant was placed on the respondent's payroll on 1 June 2020.

The claimant was paid £700 with tax deducted at source in June 2020.

8. After having completed her studies with the respondent the claimant was appointed as a Practice Educator for a student undertaking a placement at the Richmond Fellowship for the 2020/21 academic year ("the 20/21 assignment"). The 20/21 assignment was provided for in a Placement Learning Agreement ("the 20/21 Placement Learning Agreement") which was signed by the respondent, the student and the claimant. The 20/21 assignment ran from December 2020 to April 2021.

9. The 20/21 Placement Learning Agreement named the claimant as the Practice Educator and stated that her days of work were Monday to Friday. The 20/21 Placement Learning Agreement recorded at section 5 the policies and procedures that had been read and discussed by the student and the claimant, and set out the learning opportunities to be provided for the student at section 10. The 20/21 Placement Learning Agreement set out the supervision and assessment methods that would be adopted by the claimant at sections 11 and 12. The agreement was signed, including by the claimant and on behalf of the respondent.

10. The claimant asserts that she sought further work as a Practice Educator for the 2021/22 academic year, making requests in October 2021 and January 2022. Her claim to the Employment Tribunal was that the refusal to engage her constituted race discrimination. She pleaded that she had previously been employed under the 20/21 assignment. Her claim was not about that assignment but the refusal of appointment for the 2021/22 academic year. The Employment Tribunal a little inaccurately recorded that:

> The Claimant claims to have been an employee from 1 December 2020 and in October 2021 and to be an applicant for employment in January 2022. The Tribunal has to assess those periods to see whether the Claimant was an employee at that time.

11. The Employment Tribunal considered whether the 20/21 assignment constituted employment, which the claimant accepts was relevant to whether any appointment for the 2021/22 academic year would have constituted employment for the purposes of the **Equality Act 2010** ("**EQA**").

The law

12. Discrimination because of race in respect of applications for employment is prohibited by section 39 **EQA**:

> 39 Employees and applicants
>
> (1) An employer (A) must not discriminate against a person (B)—
>
> (a) in the arrangements A makes for deciding to whom to offer employment;
>
> (b) as to the terms on which A offers B employment;
>
> (c) by not offering B employment.

13. Section 83 **EQA** defines employment:

> 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; …

14. This definition covers those who would be employees and workers for the purposes of provisions such as the **Employment Rights Act 1996**. In **Clyde & Co LLP and another v Bates van Winklehof** [2014] UKSC 32, [2014] ICR 730, Baroness Hale DPSC stated:

> As already seen, **employment law distinguishes between three types of people**: those **employed under a contract of employment**; those **self-employed people who are in business on their own account and undertake work for their clients or customers** ; and an **intermediate class of workers who are self-employed but do not fall within the second class**. Discrimination law, on the other hand, while it includes a contract 'personally to do work' within its definition of employment (see, now, Equality Act 2010, section 83(2)) does not include an express exception for those in business on their account who work for their clients or customers. But a similar qualification has been introduced by a different route.[emphasis added]

15. In **Sejpal v Rodericks Dental Ltd**, [2022] EAT 91, [2022] I.C.R. 1339, I suggested:

> 7. The entitlement to significant employment protection rights depends on a person being a worker. Deciding whether a person is a worker should not be difficult. Worker status has been the subject of a great deal of appellate consideration in recent years. Worker status has come to be seen as contentious and difficult. But the dust is beginning to settle**. Determining worker status is not very difficult in the majority**

> **of cases, provided a structured approach is adopted, and robust common sense applied. The starting point, and constant focus, must be the words of the statutes**. **Concepts such as "mutuality of obligation", "irreducible minimum", "umbrella contracts", "substitution", "predominant purpose", "subordination", "control", and "integration" are tools that can sometimes help in applying the statutory test, but are not themselves tests. Some of the concepts will be irrelevant in particular cases, or relevant only to a component of the statutory test. It is not a question of assessing all the concepts, putting the results in a pot, and hoping that the answer will emerge; the statutory test must be applied, according to its purpose.** [emphasis added]

16. In **Bates** Baroness Hale emphasised the importance of focus on the statutory wording, at paragraph 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. But in my view they are not solved by adding some mystery ingredient of 'subordination' to the concept of employee and worker. The experienced employment judges who have considered this problem have all recognised that **there is no magic test other than the words of the statute themselves.**

17. The claimant asserted she entered a contract personally to do work, equivalent to being a worker for the purposes of the **ERA**.

18. There were three key questions for the Employment Tribunal:

(1) was there a contract between the claimant and the respondent

(2) if there was a contract, what were the relevant terms, and did the claimant agree personally to do work

(3) if so, was employment precluded because the claimant was in business on her own account and the respondent was her client or customer

19. While it is not necessarily an error of law to fail expressly to ask and answer those questions, a failure to do so may be indicative of an error of law and make it more difficult for an appellate court to be satisfied that the necessary analysis has been conducted.

20. The cases in which it has been held that there was no contract between a claimant and respondent have generally been where there are separate contracts between parties that fully and genuinely explain the relationship; such as where there is a contract between a respondent and an

agency and a separate contract between the agency and the claimant, but no contract between the respondent and claimant.

21. In determining whether there is a contract the Employment Tribunal is required to consider all of the relevant circumstances having due regard to the wording and purpose of the statute. It is trite law that there may be a single written contract of employment that encompasses all of the terms or the contract may be entirely oral, or a mixture of oral and written materials and/or inferred from the conduct of the parties. The Employment Tribunal should not grant excessive deference to the terms of a written agreement. The Employment Tribunal should ascertain what was the true agreement between the parties either as set out in the written terms or, if it is alleged those terms are not accurate, what is proved to be the actual agreement at the time the contract was concluded: see **Autoclenz Ltd v Belcher** [2011] UKSC, [2011] ICR 1157 and **Uber BV v Aslam** [2021] UKSC 5, [2021] ICR 657.

The conclusion of the Employment Tribunal

22. The Employment Tribunal held that the claimant was not an employee of the respondent:

> 141. Was the work the Claimant did for the Respondent in 2020 under a contract of service or any other contract personally to execute any work or labour?
>
> 142. **The first thing we look for is whether there was a written Claimant between the Claimant and the Respondent**. **It is our judgment that there was <u>no written contract</u> between the Respondent and the Claimant for the period she worked from October 2020. There was the placement learning agreement** at page 306, which related to the placement of the shielding student and the Respondent. **It was an agreement between many parties**: - the student, the Respondent, the Claimant as PE and the Richmond Fellowship, as placement provider. The Claimant signed this document as the PE **but in our judgment, the agreement was between the Respondent and the Richmond Fellowship rather than with the Claimant directly**.
>
> 143. **In our judgment, the agreement is focussed on the student and set out detailed arrangements to ensure that the student had a good placement.** As outlined in the findings of fact above, the placement agreement set out in detail a description of the agency – Richmond Fellowship – an induction checklist and practical arrangements for the student. Part of the arrangements for the student was for her to have the Claimant as her PE. It is also a fact that the Claimant was the person to send in the application on behalf of the Richmond Fellowship, to be able to provide this placement. It is our judgment that she mainly did so, in order for her to get

experience as a PE to help progress her career. The agreement is for the Richmond Fellowship to be the student's placement provider. It is our judgment, from reading the agreement and the circumstances around it, that the purpose of the placement learning agreement is to provide the student with a placement, as an essential part of their course. **The agreement is not one that is just between the Respondent and the Claimant.**

144. The Respondent writes to the organisations on its list to ask them if they want to host students this year. The Respondent did not write to the Claimant personally but to the Richmond Fellowship. The Claimant was not invited to apply personally to do a job for the Respondent. She could not be an on-site PE on her own, she can only do so if she is doing it on behalf of her employer, Richmond Fellowship. She could be an off-site PE to a student placed elsewhere than the Richmond Fellowship, but that is a different arrangement to the one that existed in 2020. If she was an off-site PE, the student would still have needed to be placed at a suitable independent or voluntary organisation which would have been responsible for ensuring that the student was given the opportunity to get the necessary experience and training.

145. **The Respondent did not advertise for PEs. It wrote to organisations and asked them if they wanted to host students.** There was no application process for PEs to apply to the Respondent for a job.

146. **Using the agreement in 2020 as an example of how these placements work, it is our judgment that the Respondent did not tell the Claimant how to do her PE work. The written agreement simply put some responsibility on the PE to support the student, to meet regularly with them in supervision, to keep records of supervisions sessions and to write a report at the end. But as the PE, the Claimant had to do so independent of the Respondent.** There were no stipulations in the agreement as to how she had to do the supervision or write the report or write the notes. There was no specifics put on her as to how to support the student.

147. Also, it is the placement provider (Richmond Fellowship) who has to ensure that the student achieves their placement learning opportunities, is supervised and supported. The placement provider may choose to do so through the PE, but the written agreement does not specifically require that. The placement provider takes responsibility for training the student. That is why when Ms Davies was worried about the breadth of work that was outlined in this agreement, she raised the possibility of the Claimant doing work for other people within the placement and suggested talking to the Claimant's manager. This was not followed up because the student asked Ms Davies not to do so.

148. **It is this Tribunal's judgment that the dominant purpose of this contract was to secure a placement for a student at a suitable placement provider.** Its main purpose was not to provide work for the Claimant or to engage the Claimant's services for the Respondent.

149. **As set out above in the case of Muschett, the absence of a contract between the Claimant and the Respondent is fatal to her being an employee under section 83 Equality Act 2010**.

150. In addition, the Claimant only worked as a PE for the duration of this agreement. She worked for less than the full placement of the previous student (MN), in 2018/19, when she was the off-site PE. On that occasion, she was replaced but the placement continued. Her being removed from the placement did not cause it to stop as the placement provider remained the same. The Claimant did not work as a PE again until she became PE to the student who was on the remote placement from 4 December 2020. Once that placement came to an end in May 2021, the Claimant did not work again as a PE for one of the Respondent's students. She only worked as an off-site or on-site PE on placements. Once the placement ended, she ceased to do this work for the Respondent. This, as stated in the Windle case above, tends to suggest that she was providing casual and intermittent services as an independent contractor for the Respondent.

151. **It is our judgment that the nature of the Claimant's work under this (2020) agreement was in the nature of a one-off assignment**, which was expected to last for the duration of the placement. It is our judgment that there were no mutual obligations between the Claimant and the Respondent. The Respondent reserved the right to substitute a different PE, if she was not performing, which they did when she was an off-site PE. There was no duty to continue to provide her with work as a PE. She was not given another student in substitution.

152. It is also our judgment that an off-site PE's relationship with the Respondent was different from that of an on-site PE only in respect of how the work was done and how much responsibility the PE had in giving support to the student. As the organisation did not have an in-house PE, the off-site PE would need to be very available and accessible to the student and be very experienced. The off-site situation in 2018-2019 was informative as it demonstrates that the Respondent was not obliged to provide the PE with work, even after the arrangement began. Although it was unusual, the Respondent's concern for the student's training and for the service users at the organisation where the student was placed, took precedence and they removed the Claimant.

153. The Respondent and the Claimant knew each other, as she had been a student since 2016 and was known to Ms Davies and others but that does not mean that she was an employee.

154. **The Claimant was providing a personal service**, but **the evidence shows that she could be replaced at any time**. **There was no obligation to pay her a wage** and she was not entitled to employee benefits such as sickness benefits, holidays or rights on termination in the 2020 agreement; all of which the Tribunal would expect to see in an employment contract.

155. **The Claimant was able and had the right to work for others while performing the PE role during the term of the 2020 agreement**.

156. **There are other documents for us to consider. These are the letters and the P45, which are in the bundle. It is our judgment that the letters were written retrospectively.** The letter dated 31 April 2021 referred to work done by the Claimant during the academic year 2020 – 2021, which by then had ended. The next letter dated 5 July 2021 referred to work done from 1 October 2020, which was also the previous

period. Both quote a set fee of £700 for each one. The letters clearly state that these arrangements do not make the person concerned an employee. It is our judgment that these are letters are not contracts. They make it clear that they do not confer employee status. What they do is to record previous arrangements to pay the Claimant for her work as PE in relation to these two periods of time. They also give her instructions on how she can claim the fees due for her work. They do not contain offers and acceptance of a job. They do not contain terms and conditions of employment. They do not impose any obligation on the Respondent to provide the Claimant with work or on her to accept any work offered to her by the Respondent. It is our judgment that these letters are not evidence of contracts of employment.

157. The P45 and the statement from HMRC show that the Claimant was treated as a PAYE for tax purposes. The Claimant was unhappy about this and complained about it at the time. This demonstrates the Claimant's tax status only and as submitted by the Respondent, tax status alone does not confer employee status on a worker.

158. **It is therefore our judgment that these documents are not records of contracts or evidence of a contract between the Claimant and the Respondent** but instead, set out how the Claimant should go about submitting invoices to be paid.

159. **It is therefore our judgment, taking into account all the facts found above and the evidence and submissions of both parties, that the practice learning agreement which began in December 2020, was not a contract of employment as between the Respondent and the Claimant**.

160. **It is also our judgment that the Claimant was not the Respondent's employee in 2020/2021 and even if she had been appointed as a PE in 2021/2022 under a similar agreement, she would not have been an employee then either**.

161. The Respondent had indicated that the Richmond Fellowship may be considered for a student in January 2022. However, the Respondent did not consider it. The Claimant was not appointed as a PE in January 2022. The Claimant did not apply for a job beginning in January 2022. Ms Davies indicated that the Respondent may consider the Richmond Fellowship in January 2022 as a possible placement for a student or that it might consider the Claimant as an off-site PE for a student placed elsewhere. That indication was not an invitation to apply for a job and was not an advert of a vacancy at the Respondent. The Richmond Fellowship did not write to the Respondent in January 2022 to propose a placement arrangement for one of the Respondent's students.

162. It is our judgment that the Respondent had no obligation to offer the Richmond Fellowship a student on placement in January 2022 or to offer the Claimant an off-site PE role to a student placed elsewhere as there was no mutuality of obligation to the Claimant in January 2022 and there was no contract between the Claimant and the Respondent at that time.

163. It is our judgment that the Respondent had no duties to the Claimant as she was not an employee. In January 2022, the Respondent chose to work with other placement providers as they proposed practice learning agreements and environments that better suited the Respondent's requirements. [emphasis added]

The appeal

23. One ground challenging the original judgment was permitted to proceed to this full hearing. The ground of appeal was described by His Honour Judge Beard in the following terms:

> The only sustainable grounds of appeal relate to the ET's decision that the claimant did not have worker status. It appears to me that is arguable given that the appointment of a PE would be with significant expectations from the respondent as to the claimant's obligations along with payment. This in circumstances where there is the lack of any indication that the claimant was in business on her own account and any substitution would be made by the respondent.

Analysis

24. The key finding of the Employment Tribunal was there was no contract between the claimant and the respondent for the 20/21 assignment and so the claimant could not have been an applicant for employment for the 2021/22 academic year. The Employment Tribunal stated in terms "the absence of a contract between the Claimant and the Respondent is fatal to her being an employee under section 83 Equality Act 2010". This clear error of law is sufficient for the appeal to be allowed.

25. The Employment Tribunal appears to have thought that it was required to find a written contract between only the claimant and the respondent. The Employment Tribunal failed to conduct the overall assessment of the arrangements between the claimant and the respondent to determine the true nature of the agreement between them. There is no requirement that a contract under which a person agrees personally to do work for another can only be a contract between those two parties. There was no requirement that the contract be wholly in writing.

26. There clearly was an agreement between the claimant and respondent as both were signatories to the 20/21 Placement Learning Agreement. This did not form the totality of the agreement because there were also arrangements under which the claimant would be paid for her work through the respondent's payroll.

27. The Employment Tribunal should have considered whether the 20/21 Placement Learning Agreement constituted the totality of the agreement between the parties, including whether further terms were incorporated from other documents, discussions or were to be inferred from conduct.

Without assessing the relevant terms of the agreement for the 20/21 academic year the Employment Tribunal could not go on to assess what would have been the terms of any agreement for the 21/22 academic year so that it could decide whether the claimant could have been an applicant for employment for the 21/22 academic year. The fact that the correspondence about payment postdated the claimant entering the 20/21 Placement Learning Agreement did not mean that it was not relevant context as to whether any agreement for the 21/22 academic year would have constituted a contract.

28. The Employment Tribunal stated that the dominant purpose of the 20/21 Placement Learning Agreement was to secure a placement for a student. This was a misapplication of the concept of dominant purpose. In this multi-party agreement, in considering whether the agreement between the claimant and the respondent was one under which the claimant agreed personally to do work, it was only relevant to consider those parts of the 20/21 Placement Learning Agreement that regulated the services that the claimant was to provide, together with any other terms that constituted the overall agreement between the claimant and the respondent.

29. The Employment Tribunal stated that the claimant could be replaced by the respondent. This appears to have been treated as equivalent to a right of substitution. The fact that a respondent can terminate a contract and replace a claimant is not equivalent to a right for the claimant to provide a substitute. The Employment Tribunal accepted that the claimant "was providing a personal service" but apparently without there being any contract in place. Any right of substitution, any lack of mutuality between assignments and the question of whether the 20/21 assignment was to be treated as a one off might have been relevant to the question of whether the claimant was in business on her own account, with the respondent in the role of a client or customer of that business, but these were not questions that the Employment Tribunal considered.

30. The appeal must be allowed.

Disposal

31. I have concluded that the error was fundamental and that remission should be to a newly

constituted Employment Tribunal. On remission the Employment Tribunal should consider the terms of the agreement under which Practice Educators work for the respondent, the requirement for personal service and whether the claimant was in business on her own account with the respondent being a client or customer had she been appointed as a Practice Educator for the 21/22 academic year.

32. Because the main appeal succeeded, the appeal against the reconsideration judgment is academic and is dismissed.