



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr J Bennetts

**Respondent**

AND The Trustees of the St Just Free Church

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Bodmin

**ON**

27 February 2020

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** Mr D Curwen of Counsel

**For the Respondent:** Mr C Murray of Counsel

### JUDGMENT

The judgment of the tribunal is that:

- 1 The claimant was not an employee of the respondent and accordingly his claims for unfair dismissal and for breach of contract are hereby dismissed; and
2. The claimant was in “employment” within the wider definition in the Equality Act 2010, and his claims for discrimination on the grounds of his religion or belief may proceed.

### RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine the employment status of the claimant.
2. In this case the claimant Mr Jonathan Bennetts has brought claims alleging unfair dismissal, breach of contract, and for discrimination on the grounds of his religion and

- belief. The claims are all denied by the respondent. This tribunal's jurisdiction to hear these various claims turns on the claimant's employment status.
3. I have heard from the claimant, and I have heard from Mr Mark Prichard on behalf of the respondent.
  4. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
  5. The claimant Mr Jonathan Bennetts is a self-employed builder, and describes himself as a Christian who holds an evangelical view of the Biblical Scriptures. The respondent to the claimant's claims is the Trustees of St Just Free Church, in West Cornwall ("the Church"). The Church is affiliated to the Wesleyan Reform Union of Churches ("WRU"). The respondent owns a Manse in St Just, which is a residential house owned by the Church. In about 2009 the claimant became friends with Mr Griffiths, who was the Minister at the Church. At that time the claimant had carried out some building work at the Church, which included the conversion of rooms to an Internet cafe known as the Fireplace.
  6. In 2011 Mr Griffiths decided to leave the Church and intended to vacate the Manse. At that time the claimant and his family did not have their own home. The respondent then discussed terms upon which the claimant and his family would be invited to live in the Manse in return for the claimant carrying out some work as a caretaker at the Church.
  7. By letter dated 21 January 2012 Mr and Mrs King of the respondent wrote to Mr Griffiths and his wife on a number of matters, including the relationship with the claimant. That letter records: "Jon Bennetts and his family would be invited to take over occupation of the Manse following your departure. Recognising Jon's primary occupation as a self-employed builder, he will also be invited to work under contract as our Caretaker, while Cita [the claimant's wife] would be invited to take an active role in the work of the Fireplace, which they would manage jointly. Financial and timing arrangements will be mutually discussed and arranged as appropriate ... In recognition of that support, we in turn would provide all necessary encouragement to Jon in his stated desire to engage in training for Lay Pastoral work, with a possible view ultimately to the Ministry."
  8. The respondent then supported the claimant's application for entry into Pastoral Ministry of the WRU. One of the relevant forms completed by the claimant shows that the claimant did not consider himself to be an employee, but rather stated that he was self-employed.
  9. The respondent held a meeting on 5 March 2012. The minutes record that: "If Jon and Sita Bennetts were to occupy the Manse (conditions will have to be agreed between them and the WRU) they would act as caretakers, and will be responsible for putting on the heating, opening up, running the cafe, and generally keeping an eye on things that might need doing."
  10. It was effectively agreed between the parties that the claimant and his family would live in the Manse at a reduced rent rather than receiving any payment for any work which he might undertake. The claimant signed a formal tenancy agreement in August 2012, and moved into the Manse in September 2012. Schedule 1 of that tenancy agreement recorded that the claimant "and his family have right of access over the footpaths to and from, and access to and in the property of, the adjacent Wesleyan Reform Union Church (aka the St Just Free Church) and the "Fireplace" cafe for the purposes of administration of, and maintenance of, the same."
  11. The market rent for the Manse was about £700 per month, and the claimant and his family resided in the Manse at an agreed reduced rent of £300 per month.
  12. Mr King of the respondent wrote a letter on 2 December 2014 "to whom it may concern" at the request of the claimant which addressed a number of issues including the claimant's occupation of the Manse. This letter records on behalf of the respondent: "Following much discussion amongst the Trustees, it was decided, and agreed upon, to allow them to occupy the Manse at a rent which was affordable to them, in return for which Mr Bennetts would carry out the equivalent of caretaking duties as and when needed, and as and when convenient with him. These were unspecified, but included the opening and closing of the

- buildings, arranging furniture, cleaning and clearing up after meetings, and any other duties that might fall within the remit of someone contractually employed to do such work, the difference being that Mr Bennetts would be “paid” in kind (the reduced rent on the house) rather than in cash. Included in these terms is the telephone line rental, as Mr Bennetts also manages the computers and Internet connection which extends through from the house to the computers located in the cafe. By the very nature of all this “work”, it is impossible to quantify it in terms of hours worked, all rates of pay, hence the adoption of a quid pro quo arrangement.”
13. This letter was provided by the respondent at the request of the claimant, and I have no reason to doubt (and I so find) that it accurately reflects the parties’ understanding of the contractual arrangement between them at that time. There was no other documentation with the exception of the tenancy agreement. There was no contract of employment or contract for services, no job description, and neither party thought to refer the matter to HMRC on the basis that any “payment in kind” (that is to say the reduced rent) might be taxable.
  14. During this time the claimant was authorised by the respondent to purchase cleaning materials and the like on its behalf.
  15. Unfortunately, from about 2017 the relationship between the parties began to break down. It seems that the claimant was keen to take over as the Minister for the Church, but the respondent decided to advertise for the position. By letter dated 10 September 2017 Mr King wrote to the claimant to confirm the decisions reached at a meeting earlier that week. This letter recorded that the respondent had decided to engage a new Minister “through the proper process of advertising and making an informed appointment”. To that end it notified the claimant that “the chances of attracting suitable candidates would be significantly enhanced by offering that person the use of the Manse ... It was further clarified and agreed that at the time that Stephen and Meryl Griffiths were departing you were originally offered the use of the Manse on a temporary basis. Given your circumstances at the time it was felt wholly appropriate to exercise some Christian compassion and offer your family the temporary use of the Manse at a rent which would be significantly less than the rate expected from a commercially comparable property. Such use of the Manse was also offered on the condition that you would vacate it in the event that the Trustees should require it to house a new Minister ... In view of the circumstances it was decided to ask you to be prepared to vacate the Manse within a reasonable period of time from receipt of this letter, in any event by Easter 2018 at the latest.”
  16. Mr Geoff Cottam was appointed as Minister in 2018. This was by near unanimous approval from the members of the Church, including the claimant who voted for Mr Cottam. It seems that the respondent then started to review the arrangement under which the claimant and his family occupied the Manse. A formal job description was prepared but never agreed by the claimant. At a meeting on 24 April 2018 the parties discussed the legislation regarding benefits in kind but the claimant expressed the view at that time that this did not affect him. He did not suggest at that time that he was in any way an employee of the respondent.
  17. By letter dated 15 October 2018 Mr Roger King resigned as a Trustee of the Respondent. His letter addressed a number of issues, including the claimant’s occupation of the Manse. He stated: “the fact that Mr Bennetts is occupying the Manse by verbally agreeing with the offer of a reduced rent in return for unspecified caretaking duties, and by accepting that repossession might be needed at some point in the future, and has done so with the agreement of the trustees, and has paid the agreed rental since commencement of that occupation, that all of this, ipso facto, constitutes a contract.”
  18. The relationship between the parties continued to deteriorate and by letter dated 26 February 2019 the Church Secretary wrote to the claimant on behalf of the respondent to this effect: “At the meeting on 13 October 2018 when your membership of St Just Free Church was suspended it was our hope and desire that there would be a period of reconciliation and you would return to full fellowship in the Church. In view of recent events and correspondence it is now clear that this is not possible. Therefore, as a result of your continued harassment of the Church leaders and the governing body, your refusal to accept the authority of the properly constituted Church Meeting and your non-attendance

- at worship services, your membership of the Church is revoked and your voluntary position of Caretaker is terminated with immediate effect. Please remove all personal possessions and surrender all your keys of the Church to Mr Roger King by 5 pm Wednesday, 6 March 2019.”
19. The claimant read that letter on 28 February 2019. I find that whatever the relationship was between the parties, it was terminated with effect from 28 February 2019 in any event.
  20. There was then a dispute between the parties following the claimant's refusal to vacate the Manse and to return the keys, and the respondent changed the various locks at the Church premises on or about 16 March 2019. The claimant then commenced the Early Conciliation process with ACAS on 30 April 2019 (Day A) and the Early Conciliation Certificate was issued on 30 May 2019 (Day B). He subsequently issued these proceedings on 1 July 2019.
  21. I find that it was never the intention of the parties that the claimant should be an employee. He was already a self-employed builder who had carried out earlier building works for the Church as a self-employed independent contractor. Neither party considered that the relationship was one of employer and employee. Both parties considered it important to prepare a tenancy agreement in connection with the occupation of the Manse, but neither considered that a contract of employment or written terms of employment were appropriate. The claimant did not receive any holiday pay or sick pay, and no payments were made to the claimant. He did not have any defined duties, and was not required to work any set hours, nor to account for the time taking when he did work. Neither party declared to the relevant statutory authorities that the claimant was receiving any benefit in kind which might be taxable. There was no express requirement for personal service on the part of the claimant. For instance, the claimant's wife was able to assist in some of the duties. The right to delegate was never really discussed between the parties, but equally other people carried out some of the cleaning or caretaking roles if the claimant was unable to do so. The claimant was never under direct control of the respondent, and carried out his duties as and when he saw fit. I find that there was no requirement for personal service, and no mutuality of obligation. In addition, the claimant was not under the respondent's direct control.
  22. However, I do find that there was a contractual relationship between the parties under which the claimant would carry out general ad hoc cleaning, maintenance and supervisory duties, in the manner in the time of his own choosing, in consideration for the arrangement with regard to the Manse, namely that he and his family could occupy it at a reduced rent.
  23. Having established the above facts, I now apply the law.
  24. Employees and workers are defined in section 230 of the Employment Rights Act 1996 ("the Act"). An employee is an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. A contract of employment is defined as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing. Under section 230(3) of the Act a 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. (A worker who satisfies this test in sub-paragraph (b) is sometimes referred to as a "limb (b) worker").
  25. Under section 94(1) of the Act the right not to be unfairly dismissed is limited to employees.
  26. This tribunal has jurisdiction to hear breach of contract claims by virtue of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"). This jurisdiction is subject to certain preconditions, including that in paragraph 3 (c) of the Order, namely that the claim arises or is outstanding on the termination of the employee's employment. Accordingly, the right to bring a breach of contract claim before this tribunal is also limited to employees.

27. Section 83(2)(a) of the Equality Act 2010 ("the EqA") defines "Employment" as "employment under a contract of employment, a contract of apprenticeship or a contract personally to do work".
28. I have considered the following cases to which I have been referred: Autoclenz Ltd v Belcher and Others [2010] IRLR 70 CA and [2011] UKSC 41; Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497; Nethermere (St Neots) Limited v Gardiner [1984] ICR 612; Express and Echo Publications Ltd v Tanton [1999] IRLR 367.
29. As confirmed in paragraphs 18 and 19 of Lord Clarke's judgment in Autoclenz in the Supreme Court: "18 : As Smith LJ explained in the Court of Appeal of paragraph 11, the classic description of a contract of employment (or a contract of service as it used to be called) is found in the judgement of McKenna J in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497, 515C : "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 ... Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be". 19: Three further propositions are not I think contentious: i) As Stephenson LJ put it in Nethermere St Neots Ltd v Gardiner [1984] ICR 612, 623 "There must ... be an irreducible minimum of obligation on each side to create a contract of service". ii) If a genuine right of substitution exists, this negates an obligation to perform work personally and is inconsistent with employee status: Express and Echo Publications Ltd v Tanton ("Tanton") [1999] ICR 693 per Peter Gibson LJ at p 699G. iii) If a contractual right, as for example a right to substitute, exists, it does not matter that it is not used. It does not follow from the fact that a term is not enforced that such a term is not part of the agreement: see eg Tanton at page 697G."
30. The Supreme Court has upheld the Court of Appeal in the Autoclenz decision, and the approach to be adopted where there is a dispute (as in this case) as to an individual's status. In short, the four questions to be asked are: first, what are the terms of the contract between the individual and the other party? Secondly, is the individual contractually obliged to carry out work or perform services himself (that is to say personally)? Thirdly, if the individual is required to carry out work or perform services himself, is this work done for the other party in the capacity of client or customer? And fourthly if the individual is required to carry out work or perform services himself, and does not do so for the other party in the capacity of client or customer, is the claimant a "limb (b) worker" or an employee?
31. I adopt and apply this test in that order. First, as to the terms of the contract, these are set out in the findings of fact above (see paragraphs 21 and 22 in particular).
32. As to the second limb of the Autoclenz test, I find that the claimant was not contractually obliged to carry out services personally. There was no "irreducible minimum" of employment status. There was an unqualified right to appoint a deputy at his own expense, even though the claimant had not chosen to do so. On balance I find that there was no "irreducible minimum": there was no mutuality of obligation; no requirement for personal service; insufficient direct control; and other factors inconsistent with a contract of service.
33. I therefore find that the claimant was not an employee of the respondent, and accordingly I dismiss the claimant's unfair dismissal and breach of contract claims which require there to have been employment status.
34. However, I do find that there was a contractual relationship between the parties under which the claimant would carry out general ad hoc cleaning, maintenance and supervisory duties, in the manner in the time of his own choosing, in consideration for the arrangement with regard to the Manse, namely that he and his family could occupy it at a reduced rent.
35. I find that this contractual relationship was sufficient to meet the definition in section 83(2)(a) EqA because there was "a contract personally to do work". The claimant is thus

- entitled to rely on section 39 EqA and proceed with his claims for discrimination on the grounds of his religion or belief.
36. Further case management orders have been made in a separate Order for that purpose.
37. For the purposes of rule 30(6) of the Employment Tribunals Rules of Procedure, the issues which the tribunal identified as being relevant to the claim are at paragraph 1; all of these issues were determined; the findings of fact relevant to these issues are at paragraphs 4 to 22; a concise statement of the applicable law is at paragraphs 24 to 30; and how the relevant findings of fact and applicable law have been applied in order to determine the issues is at paragraphs 31 to 36.

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Employment Judge N J Roper  
Dated 27 February 2020