



EMPLOYMENT TRIBUNALS

Claimant: Miss P Miluska

Respondents:

1. Rahman Amir Riaz Hussain
2. Ammar Bin Kabir
3. K B Roman Ltd
4. Let Me Intern Ltd
5. Roman Property Group Ltd

RESERVED JUDGMENT ON A PRELIMINARY HEARING

Held At: Midlands West by video **On:** 14 December 2023
21 December 2023 (in Chambers)

Before: Employment Judge Connolly (sitting alone)

Appearances

Claimant: In Person

Respondent: Mr R A R Hussain in person and on behalf of the Second, Fourth and Fifth Respondents
The third respondent did not attend and was not represented

JUDGMENT

1. The claimant was an employee of the fifth respondent within the meaning of s.230 Employment Rights Act 1996 and, therefore, also an employee within the meaning of s.83 Equality Act 2010.
2. All the complaints will therefore proceed against the fifth respondent.

3. The complaints of direct pregnancy or maternity discrimination will therefore proceed against the first and second respondents.
4. All claims against the third and fourth respondents are therefore dismissed.

REASONS

INTRODUCTION

1. By a Claim Form presented on 21 April 2023, the claimant brought five complaints:
 - Automatically unfair dismissal (pursuant to s.99 Employment Rights Act 1996 and regulation 20 (1)(a) Maternity and Parental Leave Regulations 1999)
 - Direct pregnancy or maternity discrimination
 - Unlawful deduction from wages or breach of contract
 - Failure to provide itemised payslips and
 - Failure to provide written reasons for dismissal.
2. By a response dated 23 May 2023, apparently filed on behalf of the third respondent, it denied that the claimant was an employee or worker and asserted that she was a self-employed contractor.
3. In light of the response and at a preliminary hearing for case management purposes on 9 October 2023, the claim was listed for a preliminary hearing in public to determine the issues set out below, subject to the Judge's discretion. The issues were clarified at the outset of the hearing to specify to which respondents they related:
 - 3.1 was the claimant an employee of the third, fourth or fifth respondents within the meaning of s.230(1) of the Employment Rights Act 1996 ('ERA 1996')?
 - 3.2 was the claimant an employee of the third, fourth or fifth respondents within the extended meaning of employment in s.83 of the Equality Act 2010 ('EqA 2010')
 - 3.3 was the claimant a worker of the and a worker of the third, fourth or fifth respondents within the meaning of s.230(3)(b) ERA 1996?
4. The hearing was also listed to determine the claimant's application to amend to join another individual respondent. In the event, the claimant withdrew that application which was dismissed.

PROCEDURAL HISTORY / PRELIMINARIES

5. None of the respondents complied with the Tribunal's case management order of 9 October 2023: they did not clarify whether they were jointly

represented and whether the response had been presented or stood as the response of all respondents; they did not provide the claimant with documents to be used at the public preliminary hearing nor did they send copies of any relevant witness statements for the hearing to the claimant by 13 November 2023. The claimant complied with all the orders by the specified dates.

6. The evening before the preliminary hearing, at approximately 5.45pm, the second respondent, Mr Hussain, acting on his own behalf and on behalf of an unidentified number of respondents, arranged for an application to postpone to be hand-delivered to the Tribunal. This had to be scanned and sent to me sitting remotely and the claimant appearing remotely.
7. Mr Hussain attended the hearing. I spent some time clarifying on whose behalf he was appearing and the inter-relationship between the various respondents. Mr Hussain appeared on his own behalf and on behalf of the Fourth and Fifth Respondents. He is a Director and employee of both these respondents. He stated that, on behalf of Mr Kabir, he was authorised to apply to postpone the hearing in the first instance and to represent him if the hearing proceeded. Mr Kabir is an employee of the fifth respondent, Roman Property Group Limited ('RPGL'), of which Mr Hussain is the sole Director. He is also Mr Hussain's brother-in-law. Mr Hussain stated that he did not appear on behalf of the third respondent, K B Roman Ltd. He is neither a Director nor an employee of the third respondent. The claimant pointed out that the third respondent had applied to be struck off the register at Companies House on 14 November 2023.
8. Mr Hussain stated that the response was submitted on behalf of all five respondents albeit he was not authorised to represent the third respondent at the hearing before me.
9. Mr Hussain, although appearing remotely, also arranged for a file of documents to be hand delivered to the Tribunal which contained three witness statements including one from himself (dated 5 December 2023) and one from Mr Kabir (dated 1 December 2023) each of which had supporting documents appended to them. He applied for them to be admitted into evidence in the event the hearing proceeded. These also had to be scanned and sent to me and the claimant on the morning of the hearing.
10. I refused the application to postpone made on behalf of all the respondents save the third respondent (who was not represented). I gave my reasons orally and do not repeat them here. With the claimant's agreement, I acceded to Mr Hussain's application to adduce the witness statements and documents produced on the morning of the hearing despite the fact they had not been provided to the claimant prior to the hearing date.

EVIDENCE

11. I heard evidence from the claimant on her own behalf. I was provided with a bundle by the claimant of some 100 pages. I read those documents to which I was referred. I heard evidence from Mr Hussain on his behalf and on behalf of all the respondents bar the third. I read the signed witness statements of Mr Kabir (the second respondent) and of a Mr Saif Sajid (dated 7 December 2023) and the documents appended to them.

RELEVANT FINDINGS OF FACT

The Respondents

12. The fifth respondent, RPGL, provides property letting, sales and investment services. Mr Hussain, is the sole director of RPGL. The second respondent, Mr Kabir (Mr Hussain's brother-in-law), is employed by RPGL as an Investment Consultant and Manager. Mr Kabir has no role in the other respondent companies. RPGL trades as 'K B Roman', sometimes including reference to City K B Roman / K B Roman City. That is a trading name and is to be distinguished from the third respondent, K B Roman Limited which is a limited company. RPGL is registered at an address known as 'Brindley House' in Birmingham.
13. The fourth respondent, Let Me Intern Limited ('LMIL') is a corporate relocation and facilities management company. Mr Hussain is a director of LMIL. Its' registered address is the same as the registered address for RPGL.
14. The third respondent, K B Roman Limited ('KBRL'), also operates in property lettings, sales and investments. It is registered at the same address as the other two corporate respondents. Mr Hussain, however, has no current role in KBRL.

Resolving Relevant Factual Disputes

15. To avoid repetition, I say at the outset that, where there was a dispute between the claimant and the respondents as to the facts, I preferred the evidence of the claimant.
16. I found the claimant, Miss Miluska, to be a straightforward witness. Her witness statement and oral evidence remained consistent and, importantly, were also consistent with the contemporaneous documents in the form of WhatsApp messages.
17. I found Mr Hussain's evidence inconsistent with some of the contemporaneous messages in the bundle, changeable during the course

of his oral evidence and evasive on some issues. I will give specific examples, where relevant, below.

18. In respect of Mr Kabir and Mr Sajid's witness statements, while I took account of them, I did not attach the same weight to the evidence they contained as I did to the evidence from the claimant and Mr Hussain which I heard on oath and which was tested by means of cross-examination. In respect of Mr Kabir's statement, I also noted that he referred to himself as 'we' and in the third person as 'Ammar Kabir'. This may just be a matter of style, however, it gave me some concern that the statement was not solely his.

The Start of the Claimant's Working Relationship with any Respondent

19. Prior to March 2022, Miss Miluska, was self-employed. She undertook marketing and modelling work for various clients. This included, in October 2021, work over a 3-day period for a sports clothing company in which Mr Sajid, who provided a witness statement, is involved. Mr Sajid does not provide the name of the company but it is registered at the same address as all three of the corporate respondents in this claim.
20. Mr Sajid recommended the claimant to Mr Kabir. On 10 March 2022, Mr Kabir contracted with Ms Miluska to attend a property investment show in London. On 15 March 2022, Ms Miluska worked at the show with Mr Kabir and Mr Hussain. I accept that, by this time, she was looking for employment and was intending to cease working in a self-employed capacity. This is corroborated by an email (p63) which refers to an offer of a sales assistant role to her by Sandro clothing on 16 March 2022.
21. I accept Ms Miluska's evidence that Mr Kabir and Mr Hussain were impressed with how she conducted herself with prospective clients and asked her if she would consider a job with them. The role was, in essence, a sales role for property investments. Discussion as to the terms and conditions of the role took place verbally with Mr Kabir who informed Ms Miluska he would seek Mr Hussain's authority in order to make an offer.

The Agreement

22. On 17 March 2022 Mr Kabir messaged the claimant on WhatsApp as follows:
"Ok Paula

Monday, Tuesday, Friday 9-5
Saturday 10-3
£1100 basic
£250 commission

But you need to let me know asap because the recruitment agents have got the ad live xx”

23. To which Ms Miluska replied “I’m in’.
24. I find that this exchange implies that Mr Kabir had obtained Mr Hussain’s agreement to make this offer.
25. On 18 March 2022 the messages continued as follows:

Mr Kabir

“We can have you started this Monday....

Do you require a work contract this might take some time from the admin team x

Miss Miluska

“Yes I will require a contract please. Don’t worry let me know as soon as it is ready...”

Mr Kabir

“...we’ll work out a pro rata amount from 21 March to end of the month for this monthly (*sic*) salary”

26. On 19 March
Mr Kabir
“...Just letting you know on work contract there could be a delay x”
Miss Miluska
“Ok, can you advise me on how long x”
Mr Kabir
“Not too long hopefully couple of weeks”
Miss Miluska
“No problem, see you Monday”

Job Title and Payment terms

27. Ms Miluska commenced on 21 March 2022 at Brindley House. She was provided with an email address ‘*paula@kbroman.co.uk*’ – the same suffix as Mr Kabir’s email address (p41). She was provided with an email signature with the title ‘Investment Consultant’ (p96) – the same title as in Mr Kabir’s email signature. She was provided with a direct line number at Brindley House – the same number on Mr Kabir’s email signature. The email also contained two corporate logos which stated ‘*K B Roman working in partnership with Poseidon Capital Management*’ (‘PCM’).
Mr Hussain is a director of Poseidon Capital Management.

28. Mr Hussain messaged Ms Miluska on her first day with a 'Plan for Today' (p78) as follows:
"Learn brochure and SPI Guide
Create LinkedIn Profile
Learn qualification of sophisticated investor and high net worth individual
Write up a message for LinkedIn queries and send mailers out
Listen in on investor calls / zooms".
29. He also drafted a message for her to send to prospective investors which instructed Ms Miluska to sign off as 'Investment Consultant'.
30. Mr Hussain in oral evidence and Mr Kabir in emails to the Tribunal variously asserted that the claimant worked on an ad hoc basis modelling, undertaking office administration and receptionist duties for which they alleged she was paid varying amounts. Mr Kabir asserted that the work was mainly centered around modelling (p42). In later oral evidence Mr Hussain said that the claimant was in fact sub-contracted to undertake some of Mr Kabir's workload. This is one of the inconsistencies both in oral evidence and when compared to the contemporaneous written evidence that led me to doubt Mr Hussain's evidence and prefer that of the claimant.
31. I find that the claimant was engaged to undertake work as an investment consultant for which it was agreed she would be paid a fixed monthly basic salary of £1100.00 and that she would receive £250 commission for each investment client she successfully introduced to Mr Kabir or Mr Hussain and who went on to make a relevant investment.
32. On the basis of Mr Hussain's discussions with Miss Miluska at the show on 15 March 2022, the messages in [28] above (and his subsequent messages directing Miss Miluska in her work set out below), I find that Mr Hussain was aware Mr Kabir had entered into this agreement with Miss Miluska.

LinkedIn Profile

33. In accordance with Mr Hussain's instructions (above) and with Mr Hussain's close oversight, the claimant created a LinkedIn profile (which appears at p34). It was a tool which she used in her work to send and receive messages and publicise the work which she was doing. In it she identified that she had 'experience' as an investment consultant with KB Roman 'full-time' from January 2020 and in investor relations 'full-time' for PCM from October 2021. It also referred to her being self-employed as 'Fine Artist' from August 2019 to the present date.
34. I accept Miss Miluska's evidence that Mr Hussain was aware of this profile at the time it was created and that he instructed Miss Miluska what

companies or trading entities to identify: the trading name of RPGL and PCM with whom RPGL worked in partnership. I also accept that he instructed her to date the entries from the first date/s that she had carried out work for the associated group of companies. I do not accept that this is a 'lie which reflects on Miss Miluska's character' as asserted in Mr Kabir's statement [5].

The Written Agreement

35. By 7 April 2022 Miss Miluska needed to complete forms for a reference agency who were checking credit and references for a prospective landlord. She asked Mr Kabir, by WhatsApp, in an open and non-leading manner what details she should enter. He stated as follows (p68):
In respect of source of income, he stated 'employed'
In respect of Employment status, he stated 'permanent'
Company name – 'K B Roman City'
Address – 'Brindley House'
Job title – 'Investment consultant'
36. These details were insufficient on their own. The landlord referencing agency required a written copy of any relevant work agreement. Miss Miluska had not been provided with a 'work contract' by Mr Kabir as agreed. She asked Mr Kabir if he could provide one urgently. In evidence she said he told her to produce one herself and he would sign it. None of this is set out in the WhatsApp messages in the bundle. Miss Miluska gave evidence that the contract at p69 of the bundle was put together by her, sent to Mr Kabir by email on 8 April 2022 and returned by him by email signed with a scanned signature. She has had no access to her 'KB Roman' email address since she ceased working at Brindley House. Further, the respondents have not disclosed any emails to her. In her witness statement Miss Miluska explained that she drafted the contract in the bundle. She has never claimed it was drafted by any of the respondents albeit she says it was signed by Mr Kabir.
37. The contract is headed 'Employment Contract' and provided as follows (amongst other matters):
- 37.1 'K B Roman City trading as RPGL' is 'the employer' and the registered company number for RPGL is set out. Miss Miluska stated in evidence that Mr Kabir provided her with these details.
 - 37.2 Miss Miluska is employed in the capacity of Investment Consultant
 - 37.3 The start date of her continuous employment is 21 March 2022
 - 37.4 She will be paid £45,000 per year by monthly installments
 - 37.5 Her normal working days are Monday Tuesday Friday and Saturday
 - 37.6 Her normal place of work is Brindley House
 - 37.7 Holiday entitlement, sickness procedure, SSP, termination of contract and notice are provided for.

- 37.8 There is a clause at [7] which provides that she can only work for someone else with advance written agreement from RPGL.
38. Mr Hussain suggested in cross-examination of Miss Miluska that the salary amount was deliberately overstated to mislead the reference agency. Miss Miluska stated that Mr Kabir had told her from the outset that she could expect to earn £37,500 including commission. At this early stage of the work, she thought that £45,000 p.a. would be achievable and satisfy the reference agency. In fact, it transpired it was much harder to attain commission than she had understood and depended much more on the success of others such as Mr Kabir and Mr Hussain in 'closing a deal' after an introduction but this was not what she understood at the time. I accepted that explanation which was given readily, clearly, and coherently. In the circumstances, I did not accept that the inclusion of a salary figure in this amount damaged Miss Miluska's reliability on the relevant issues that I had to determine.
39. Miss Miluska gave evidence that Mr Kabir had signed the document and confirmed the position when the reference agency contacted Mr Kabir to check.
40. Mr Kabir, in his witness statement stated that '*we unequivocally declare this document is fraudulent*' and the signature forged. He compared it to that on '*Ammar Kabir's*' driving licence (referring to himself in the third person). He did not address Miss Miluska's contention that he confirmed the contract when contacted by the reference agency despite the fact he had seen her witness statement in advance of preparing his own. Mr Kabir also stated that the WhatsApp messages in respect of a work contract and Miss Miluska's employment status were "*only of a casual nature and [the discussion] was left open for consideration. The context of the discussion was related to assisting Miss Miluska with her rental property application process*".
41. I reject Mr Kabir's written evidence for a number of reasons:
- 41.1 it is written and I prefer Miss Miluska's oral evidence,
 - 41.2 it fails to address relevant issues such as whether he confirmed the contract when contacted by the agency
 - 41.3 I find that the discussion about 'salary' and a 'contract' pre-dated any discussion about information for the reference agency. I therefore find his explanation as to why he first raised the issue of a contract and why he specifically stated Miss Miluska was employed on WhatsApp to lack credibility.
 - 41.4 As stated above, I have also found Mr Kabir's written assertions about Miss Miluska's role and the agreement as to pay to be inconsistent with the contemporaneous documents.

42. On balance, therefore, on the evidence I have seen and heard, I accept Miss Miluska's evidence that the contract was created by her but signed and subsequently approved by Mr Kabir.

The Work between March 2022 and 1 December 2022

43. Between 21 March 2022 and 1 December 2022, when Miss Miluska ceased work with any of the respondents, I find that she worked as an investment consultant. Mr Kabir was her line manager and Mr Hussain was his line manager. Her work was primarily for the benefit of RPGL although, given the other directorships held by Mr Hussain, I accept that, from time to time her work is likely to have benefited other associated and partnership companies such as PCM.
44. I also accept that, on at least one occasion, Mr Kabir and/or Mr Hussain asked the claimant to model in photographs to promote the opening of a hair and beauty salon run by a company of which Mr Hussain was a director and which was located in or immediately adjacent to Brindley House where the claimant was based as an investment consultant.
45. I accept Miss Miluska's evidence that what she did was directed and supervised by both Mr Kabir and Mr Hussain. I attach weight to the messages in the bundle where it can be seen she was joined into a WhatsApp group where various individuals were given direction by Mr Hussain and Mr Kabir including Miss Miluska (p87 – p88; p94, p95). I note that this included the setting of targets as to zoom calls (p89), the group being upbraided (p91) and told that the fact an experienced individual is threatening a complaint means 'we need to improve *our* service', direction to Miss Miluska to show someone else how to put up new advertisements and what information must be included in respect of 'move ins'. I also attach weight to the messages in the bundle where Mr Hussain contacted Miss Miluska directly to give her direction as to who should be added to the database, who to call on any given day etc (p76 – 77; p81 – 86).
46. I find that Miss Miluska was expected to work at Brindley House on the days and times agreed with Mr Kabir at the outset unless there was some agreement to vary those on an ad hoc basis. I note a message from Mr Hussain (p93) to the group chat where he states to all on the group that they need to be in the office at a specified time.
47. In relation to working location and hours, Mr Hussain relied on a section of Miss Miluska's claim form (p15) and a WhatsApp exchange as appended to his statement as Exhibit A. Both documents concern events in November 2022. In the Claim Form Miss Miluska set out circumstances in which she left work on 17 November 2022. Exhibit A is a series of i-messages on 27 November 2022 between Miss Miluska and Mr Kabir. In them, Mr Kabir

asked Miss Miluska if she thought she would be able to come into the office Tuesday – Friday the following week. Mr Hussain contended this demonstrated that Miss Miluska was at liberty to come and go as she wished.

48. I found his evidence in this regard to be inconsistent with and a distortion of both documents. It ignored what Miss Miluska said was the discussion beforehand and the discussion shown thereafter: Miss Miluska had been unwell the previous week because of acute morning sickness. I accepted that she left work on the afternoon of 17 November 2022 but that she informed Mr Kabir she had done so and explained it was because she was unwell. She specifically stated this in the Claim Form. I accept that, on 21 November 2022, when she was unwell again, she asked and Mr Kabir agreed that she could work from home. It was in that context that Mr Kabir asked, on 27 November 2022, if she would be able to come in the following week. She replied that she was about to message him about taking the week off. She said she was still very ill and, if it didn't improve, she would be admitted to hospital with hyperemesis gravidarum (i.e. a pregnancy-related illness).
49. Mr Hussain further relied on an apology contained in the message where Miss Miluska said she felt bad and asked 'Should I send James in' followed by a laughing and a crying emoji. James was Miss Miluska's partner. Mr Hussain suggested this demonstrated that Miss Miluska was free to send whomsoever she chose to carry out any relevant work on her behalf. Miss Miluska maintained this was a joke and strongly denied any suggestion that she could have or ever had sent her partner to do the work which she was required to do. I accept Miss Miluska's evidence in that regard, supported as it was, by the content of the documents. Further, it seemed to be to be inherently implausible that Miss Miluska's partner could have picked up the type of investment consultant work which I have found Miss Miluska was undertaking as detailed above.

Pay

50. In his witness statement Mr Hussain strongly made the point that Miss Miluska had failed to provide evidence as to her pay. He contended that, if she provided such evidence, it would demonstrate varying monthly amounts which he alleged were consistent with different ad hoc projects that she carried out as an independent contractor. He suggested I should draw an adverse inference against Miss Miluska in the absence of such documents.
51. In fact, I found Mr Hussain, on behalf of the respondents, evasive on this issue. Mr Hussain stated that RPGL employed a Ms Kabir in a dedicated finance role and engaged some other contractors such as maintenance contractors who were paid monthly according to the work they did. Mr

Hussain was asked whether Miss Miluska had ever provided invoices or timesheets or how any respondent who used her services would know how much to pay her. He was also asked whether there was any reason why this payment information had not been obtained from RPGL or LMIL or any other company of which Mr Hussain was a director and for which he claimed Miss Miluska had provided her services. He evaded the question and was unable to answer satisfactorily. First he said he would not have any insight into such payments as a Director; then he suggested it was because the case was prepared last minute. I note that, on 30 October 2023 (p58), Miss Miluska emailed Mr Kabir at his work address and requested that copies of her payslips be disclosed. This should have prompted the respondents to disclose any relevant payment information. A point only reinforced by the emphasis Mr Hussain placed on payment information in his own statement.

52. On the evidence before me, I concluded that Miss Miluska was paid a monthly amount in arrears which comprised basic salary and any commission payments in accordance with her evidence and the agreement documented in the contemporaneous messages.

Work for Others

53. Mr Hussain asked Miss Miluska in evidence whether she had carried out work for others unconnected to any of the respondents in the period 21 March – 1 December 2022. Despite there being no documentary evidence on this issue, Miss Miluska readily accepted that she modelled make up application on three occasions for a friend / acquaintance for which she received a modest fee on each occasion but nothing else. I accept her evidence in that regard.
54. Miss Miluska's work for any of the respondents ended on 1 December 2023. I make no findings as to the circumstances in which it came to an end as that is likely to trespass on issues relevant to any final hearing.

RELEVANT LAW

Statutory Provisions

55. Understandably, neither party, as unrepresented litigants, were in a position to refer me to relevant law albeit each, in their witness statements and evidence, addressed the issues of obligation, control, and personal service which one might expect to be relevant to determining whether an individual is an employee, a worker or in business on their own account. I took account of the relevant law as I understand it set out below.
56. **Section 230(1) ERA 1996** defines an 'employee' as:

‘an individual who has entered into or works under a contract of employment’.

57. **Section 230(2)** of the same Act provides that a ‘contract of employment’ is ‘a contract of service...whether express or implied, and (if it is express) whether oral or in writing’.
58. By virtue of **s.230(3)(b)**, an employee working under a contract of employment is to be distinguished from a ‘worker’ working under a contract 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 client or customer of any profession or business undertaking carried on by the individual’.
59. **S.83(2) Equality Act 2010** provides as follows:
“Employment” means –
(a) Employment under a contract of employment ... or a contract personally to do work.’
This is sometimes referred to as the ‘extended’ definition of employment.
60. Thus and, in short, the extended definition of ‘employment’ for the purpose of Equality Act claims, includes employees and workers as defined in the ERA 1996 (**Pimlico Plumbers Ltd and anor v Smith [2018] UKSC 29; [2018] ICR 1511, paras 13-15**, approved in **Uber BV v Aslam [2021] ICR 657, SC para 112**).

Caselaw

61. In order to determine whether Miss Miluska is an employee (under a contract of service), worker (under a contract for services or work) or self-employed individual in business on her own account, I need to identify whether a contract exists, with whom, the terms of that contract and then characterise or assess the nature of the contract.
62. My ‘quest’ is:
‘to ascertain what was in truth and reality truly agreed by the parties’.
(Ter-berg v Simply Smile manor House Ltd and ors [2023] EAT 2, para 38).
63. If I identify a contract and move on to identifying its terms and nature, I should have regard to all the circumstances of the case and the purpose of the legislation on which the individual founds their claim. I can have regard to any written terms of the contract while taking care to take into account the relative bargaining power of the parties at the time the written contract was entered into. I should be astute to ensure that any written terms

- accurately represent the true agreement, not only at the inception of the contract but at any later stage where evidence shows that the agreement has been expressly or impliedly varied or does not accurately reflect what the parties agreed or implemented. I am not constrained by the conventional principles of contract law. (**Autoclenz Ltd v Belcher and ors [2011] ICR 1157, SC; Uber BV v Aslam [2021] ICR 657, SC**) and **Ter-berg (above) paras 38 – 42**).
64. The above approach applies as much to identifying the identity of any employer / the other party to any agreement as it does to ascertaining the terms of the agreement or characterising the nature of the agreement. (**Dynasystems for Trade and General Consulting Ltd and ors v Moseley EAT 0091/17** and **Clark v Harney Westwood and Riegels and ors [2021] IRLR 528, EAT**).
65. When ascertaining whether any contract is a contract for services, I am guided in my approach by the classic statement in **Ready Mixed Concrete (South East) Ltd v Ministry of Pensions and National Insurance [1968] 1 All ER 433, QBD**:
“A contract of service exists if the following 3 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 sufficient degree to make that other master.
(iii) the other provisions of the contract are consistent with its being a contract of service”
66. As the caselaw has developed it is, however, clear, that the question of whether an individual works under a contract of service requires a multi-factorial approach. As set out in **O’Kelly & ors v Trusthouse Forte plc [1983] ICR 728, CA** a tribunal must
“consider all aspects of the relationship, no single factor being in itself decisive and each of which may vary in weight and direction and, having given such balance to the factors as seems appropriate, to determine whether the person was carrying on business on his own account”.
67. Relevant factors include:
- 67.1 whether the contract is to do the work personally
 - 67.2 whether there is mutuality of obligation sufficient to create a contract at all and/or a contract of employment specifically
 - 67.3 whether there is sufficient control by the putative employer
 - 67.4 the degree of organisational integration of the individual

- 67.5 the economic reality i.e. who takes the ultimate risk of loss or profit and whether the individual can be said to be in business on their own account
- 67.6 any other factors which appear consistent or inconsistent with the contract being one of employment.
68. The first three factors above benefit from a little more elucidation.
- 68.1 In relation to ‘personal service’, if the individual has a “genuine” and “unfettered” (i.e. unrestricted) right to substitute someone else to carry out the work in their place, that will defeat claims to employee (and worker) status (**Stuart Delivery Ltd v Augustine [2021] EWCA Civ 1514 [2022] ICR 511**).
- 68.2 Mutuality of obligation is usually concerned with the obligation on an employer to provide work and pay for it and a corresponding obligation on the employee to accept and perform the work.
- 68.3 The concept of control requires that ultimate authority over the purported employee in the performance of his/her work rests with the employer. The question is not necessarily whether a respondent employer exercises day-to-day control over a claimant’s work but whether it had a contractual right of control over content and/or manner of working to a sufficient degree (**Troutbeck SA v White & Todd [2013] EWCA Civ 1171**).
69. If Miss Miluska is an employee working under a contract of service, she will also satisfy the extended definition of employment in the EqA 2010 and the definition of a ‘limb b’ worker in s.230 ERA 1996. If she is not an employee in that sense, and if ascertaining whether any contract is a contract for services or work, I must consider whether:
- 69.1 The contract provided for her to carry out personal services and
- 69.2 Those services were for the benefit of another party to the contract who is not a client or customer of Miss Miluska’s business.
70. The object of the exercise I undertake is to paint a picture and make an assessment of the relationship based on the accumulation of detail.

CONCLUSIONS

71. Miss Miluska submitted that she was an employee of RPGL, the fifth respondent, within the meaning of s.230(1) ERA 1996 or, in the alternative, was an employee/worker of RPGL within the extended meaning in the EqA 2010 and s.230(3) ERA 1996 ‘limb b’. In the final alternative, she was employed by or a worker for one of the other two corporate respondents in light of her uncertainty about trading names and companies working from Brindley House some of whom may have benefited from her work. Mr Hussain submitted that she fell within neither definition and was a self-

employed freelancer in business on her own account who provided services to RPGL and LMIL amongst other companies.

Existence of a contract

72. I find that Miss Miluska agreed a contract with Mr Kabir on 17 March 2022 as evidenced by the messages set out in [22]-[23] above and p64 of the bundle. Mr Hussain emphasised that there was no 'formal' documentation, no offer letter, for example. I find this was, initially, an oral contract which is specifically provided for in s.230 ERA 1996. It was evidenced by Whatsapp messages at the time.
73. Mr Hussain maintained that there was no evidence that he had authorised or confirmed this contract. I am satisfied that Mr Kabir had the express authority of Mr Hussain to enter into the contract as he told Miss Miluska he needed to obtain such authority on 15 March 2022 and reverted to her on 17 March 2022 with the words 'Ok Paula' and the terms of the contract. I am satisfied that Mr Hussain was aware of what was agreed as set out in my relevant factual findings. In any event, I am satisfied that Mr Kabir, as a manager and employee of RPGL, had ostensible authority to enter into agreements such as this on behalf of RPGL.

Parties to the Contract

74. I find that RPGL, the fifth respondent, was the other party to the contract with Miss Miluska. I make this finding on the basis that:
- Mr Kabir, who negotiated the contract, was employed by RPGL and had authority from Mr Hussain, also employed by RPGL
 - Mr Kabir identified 'K B Roman City' as the party to the contract on p68 and I am satisfied this was a reference to the trading name of RPGL
 - Miss Miluska was provided with an email signature which referred to K B Roman – the trading name for RPGL
 - Mr Kabir informed Miss Miluska that RPGL should be identified as her employer in the written contract she drafted
 - Mr Kabir signed the contract produced by Miss Miluska which identified RPGL as her employer and he confirmed the contract when contacted by the property reference agency
 - Mr Kabir directly line managed Miss Miluska in his capacity as an RPGL employee and Mr Hussain managed her in his capacity as a director of RPGL.

The terms and nature of the contract

75. I have examined and evaluated all aspects of the relationship between Miss Miluska and RPGL. It is only for ease of reading that I set my findings out

under headings below. There is also self-evidently some overlap between the various sections.

Personal Service

76. I find that Miss Miluska was obliged to and did carry out the work for RPGL personally. As set out in [49] above, I reject any suggestion that she was entitled to or did send her partner or anyone else to do the work in her place. I do not accept that such a right was evidenced by the messages upon which Mr Hussain relied. I find that it was inherently improbable that her partner or anyone else could attend and immediately take up the type of investment consultant work on which Miss Miluska was engaged.

Mutuality of Obligations

77. I accept Miss Miluska's contention that RPGL were obliged to provide her with work on her working days and remunerate her in the form of salary and commission for the work she carried out. I find she was obliged to perform the work they gave her. I find that this is demonstrated by the working pattern over the course of the period 21 March 2022 – 1 December 2022, the messages agreeing salary and commission, the messages directing her to carry out work and requiring her (and others) to attend the office in good time for meetings all set out in my findings of fact. I find this is further supported by the terms of the written contract which sets out her duty to carry out her role and her right to receive remuneration. I have, however, attached limited weight to the written contract in the unusual circumstances where the detail was drafted by Miss Miluska and could be said to reflect her understanding more than RPGL's. Nonetheless, I find it is appropriate to attach some weight to it where it is signed by Mr Kabir and the evidence shows it reflects how the relationship worked in practice.

Control and Freedoms

78. I find that a clear picture emerged of the significant degree of control which RPGL was entitled to exercise over Miss Miluska, the work she did and the days and times on which she did it. This is an area which overlaps with mutuality of obligation above.
79. Mr Kabir and Mr Hussain directed Miss Miluska as to:
- 79.1 what work she should do and prioritise as demonstrated by the messages set out in my factual findings;
 - 79.2 on what days and between what times she should do the work, as set out in the WhatsApp messages when the contract was entered into, the written contract and the subsequent messages seeking to enforce a particular start time;

- 79.3 what information should be included in particular tasks as demonstrated by the WhatsApp message set out in my findings and the standard to which the work should be done, expressing disappointment on the occasion set out;
 - 79.4 the salary she would receive and the terms on which she would qualify for commission;
 - 79.5 Targets for she should aim in respect of numbers of calls booked per week
 - 79.6 where she should work, as demonstrated when she was given permission to work from home on 21 November 2022 and for a period thereafter;
 - 79.7 holiday entitlement, notification of sickness, payment of SSP and reserved the right to RPGL to require Miss Miluska to undergo a medical examination by way of the terms of the written contract.
80. I find that Miss Miluska was obliged to and did inform Mr Kabir if she was absent ill and for how long she may be ill as evidenced on 17 and 22 November 2022.
81. I note and weigh a factor that might be said to indicate limited control i.e. the fact that Miss Miluska also carried out work on three occasions for a friend / acquaintance. This could be said to be inconsistent with the general expectation that she provide her services exclusively to an employer and with the provision in the written contract that she could only work for someone else with RPGL's permission. I conclude that this does not detract from the control which RPGL exercised overall given the limited occasions on which this had occurred and the fact that it did not interfere with her work or working times for RPGL. I accept that she did not have any other customers / clients while working for RPGL.

Integration

82. I find that Miss Miluska was well-integrated into RPGL's business having been provided with a work email address, telephone line, the email signature set out above, joined to the work WhatsApp group chat, and being based in Brindley House.

Other Factors

83. I attach some weight to the fact that Miss Miluska, Mr Kabir and Mr Hussain considered the relationship to be one of employment and labelled it as such as evidenced in their discussions at the show on 15 March 2022, Mr Kabir's reference to 'salary' in his negotiations with Miss Miluska, Mr Kabir's WhatsApp messages on 8 April stating that Miss Miluska was employed and in the written contract. This is primarily a matter for judicial assessment of the substance of the relationship, not the opinion of the parties but I find

it of some relevance that this was the genuine intention and view of the parties throughout their working relationship.

84. I find that the pay arrangements were that of basic salary plus commission and were typical of that one would associate with employment. I have not been provided with any evidence that she charged for time spent or per project or was paid on this basis either by a variety of the corporate respondents, other companies in which Mr Hussain was involved or third parties (other than for the friend / acquaintance to whom I have already referred). I do not find that Miss Miluska actively marketed her services as an independent person to the world in general.

Overall Conclusion

85. Standing back and assessing the above as a whole, I come to the conclusion that Miss Miluska was working for RPGL under a contract of service and was employed by them in the sense set out in s.230(1) and (2) ERA 1996. In summary, their working relationship had all the hallmarks of the obligation to provide and pay for work which one would expect of an employer and to accept and do the work personally which one would expect from an employee; there was a significant degree of control by RPGL of Miss Miluska's work and working terms and integration of her into the business of RPGL; she and RPGL genuinely intended to enter into an employment relationship and worked throughout the relevant period in a manner which was consistent with that intention.
86. As I find Miss Miluska was an employee within the meaning of s.230 ERA 1996, she, necessarily, satisfies the extended definition of an employee within the meaning of s.83(2)(a) EqA 2010 and worker within the meaning of s.230(3)(b) and it is unnecessary to consider those issues further.

Signed by _____ on 22 December 2023
Employment Judge Connolly