



EMPLOYMENT TRIBUNALS

Claimant: Father Stavros Bozos

Respondent: Greek Orthodox Community of Leeds

Heard at: Leeds by Video (CVP) **On:** 21 and 22 November 2023

Before: Employment Judge Bright

Representation

Claimant: In person

Respondent: Mr C Howells (Counsel)

Interpreter: Ms Zace

RESERVED JUDGMENT FOLLOWING A PRELIMINARY HEARING

The claimant was an employee of the respondent at the relevant time. The claim of unfair dismissal, wrongful dismissal and a failure to provide written reasons for dismissal will therefore proceed.

REASONS

1. The claims are for unfair dismissal, wrongful dismissal (breach of contract in respect of notice) and a failure to provide written reasons for dismissal.
2. In short, the claimant says he was employed, and dismissed, by the respondent. The respondent says the claimant was not its employee but instead was, and remains, employed by the Church of Greece. The respondent says the claimant was on secondment to the Archdiocese of Thyateira and Great Britain and was merely hosted by the Greek Orthodox Community of Leeds, a registered charity.

3. This preliminary hearing was listed, at a previous preliminary hearing for case management which took place on 7 March 2023, to determine whether or not the claimant was an employee of the Greek Orthodox Community of Leeds (“the Leeds Community”), however that entity ought to be legally identified.
4. The respondent confirmed at this hearing that it no longer intended to pursue the case that, if the claimant was an employee of the Leeds Community, the claim had little or no reasonable prospect of success because it was the decision of the Archbishop to end/not renew the secondment and/or revoke the claimant’s licence to officiate as a priest. The respondent conceded that, if the claimant was found to be an employee of the Leeds Community, the circumstances of the dismissal would attract a finding of unfair dismissal and it would be likely that the Tribunal would be invited to set the matter down for a remedy hearing.

Evidence

5. The claimant adduced two witness statements. The first of these had been prepared by the claimant with the assistance of his former solicitor, prior to the postponement of this preliminary hearing on a previous occasion, and ran to seven pages plus 13 pages of exhibits. The second of these (the claimant’s supplemental witness statement) was prepared by the claimant as a litigant in person, ran to 88 pages, and was a dense document, was much less easy to follow, and did not appear to contain much actual evidence. The respondent objected to the admission of the supplemental witness statement on the grounds that it had not been available on the occasion of the previous postponed preliminary hearing. On reviewing the supplemental witness statement, it was apparent that it presented commentary on the facts, law and documentary evidence set out elsewhere, in the manner of submissions explaining the claimant’s case. I therefore determined that it would be more pragmatic to treat that statement as written submissions, rather than as witness evidence. The parties agreed to that approach. The claimant’s evidence in chief was therefore his first witness statement, on which he was cross examined, while his supplemental witness statement was treated as written submissions.
6. The claimant also adduced the written statements of Nigel Gotteri, Leonidas Angelou, Elli Konstantakopoulou, Pavlos Lykoudis, and Alexandra-Despoina Gioutsou, whose evidence the respondent accepted and did not challenge. It was not therefore necessary for those witnesses to appear or be cross examined on their evidence.
7. The respondent called George Karageorgis, Barry Paschali and Archbishop Nikitas of Thyateira and Great Britain. Those witnesses presented written witness statements and were cross examined at the preliminary hearing by the claimant.
8. His Eminence, Archbishop Nikitas gave evidence from the United States on the second day of the preliminary hearing, having had difficulty joining the hearing on the first day of the hearing, initially by telephone but eventually succeeding by video on the second day. In view of the difficulties, it was agreed to interject his evidence at the outset of day two, ahead of the claimant’s evidence.
9. The parties presented a file of documents of 1086 pages. Although Mr Howells for the respondent initially objected to the claimant apparently disclosing a large

number of new documents in recent days, Mr Howells was unable to identify the new documents and many of them appeared to already be included in the file of documents before the Tribunal. Eventually the parties agreed to proceed with the file which had been presented to the Tribunal by the respondent. Page numbers in these reasons are references to pages in the agreed file of documents.

The facts

10. There is very little dispute as to the facts of the case. Where there was a dispute, I have resolved it, on the balance of probabilities, on the evidence before me.
11. In summary, the respondent is a community which follows the teachings of the Greek Eastern Orthodox Church. The members of the respondent are all Orthodox Christians under the spiritual jurisdiction of the Archdiocese of Thyateira and Great Britain (the Archdiocese). The respondent is a registered charity, the executive committee of which operates in accordance with a constitution adopted and voted by the clergy-laity ("the Constitution"). Under the Constitution the priest in charge of the Community is appointed by the Archdiocese after consultation with the respondent and a formal application (page 118). The respondent has, over the years, sought placement of community priests from the Archdiocese on temporary assignments and the Archdiocese, through its connection with the Church of Greece, sources priests directly from Greece. This is a not-uncommon practice, as there are insufficient numbers of Greek Orthodox priests available to minister to communities in Great Britain and such communities therefore rely on the Archdiocese seconding priests from Greece, in accordance with Article 60 of the Constitution of the Church of Greece 590/1977 (page 113). Mr Karageorgis gave evidence at the hearing that, while he understood that the claimant was seconded from the Church of Greece, and secondments could be for two or four years, sometimes they became more permanent depending on circumstances.
12. The claimant like other seconded priests was, and remained throughout his time with the respondent, a priest of the Greek Orthodox Church in Greece, entitled to a salary, sick pay, holiday and pension from the Greek State, as a civil servant. Paragraphs 1 to 18 of Mr Karageorgis' witness statement were not disputed.
13. On 6 June 2018 the acting Chairman Dr Chris Hadjicharitou and Secretary of the Executive Committee confirmed to the claimant that His Eminence Archbishop Gregorios of the Archdiocese of Thyateira and Great Britain had given his blessing for him to assume his duties (pages 126 – 127).
14. That letter reads (in translation from the Greek):

We are writing following discussions we had with you during your Leeds visit and after your 17.04.2018 application to His Eminence and our Master-Shepherd, Archbishop of the Greek-Orthodox Archdiocese of Thyateira and Great Britain, Mr Gregorius, regarding assuming "priest-in-charge" duties in our Three Hierarchs Greek Orthodox Community of Leeds and Surrounding Districts. In our regular Tuesday 05.6.2018 Community Executive Committee Meeting, at a quorum, and also expressing the opinion of the in-Christ-fold/members of it [the Community], we decided to address His Eminence, the Archbishop of the Greek-Orthodox Archdiocese of Thyateira and Great Britain,

Mr Gregorios, and apply that he gives his blessing, so that we invite you to assume the priest-in-charge duties of our Community. This we did today.

His Eminence wholeheartedly accepted our proposal, and, as per the rest, they will be noted in writing. Our Community will offer you a full time employment contract with duties as provided in the in-force Constitution of the Greek-Orthodox Archdiocese of Thyateira and Great Britain.

Our in-writing official offer (offer of employment) will follow very soon, and it will include everything orally agreed with our Community's treasurer Dr Costas Papagiannopoulos.

This [offer of] position lies under:

- *The reception of a satisfactory referral letter by your Metropolitan*
 - *A letter by your ecclesiastical authority, the Church of Greece, for your secondment to the Greek-Orthodox Archdiocese of Thyateira and Great Britain.*
- We request, in cooperation with your Metropolitan, to act everything necessary for your secondment to materialize.*

As Executive Committee we would like to stay informed as per developments and your actions as regards your secondment.

15. I note the use of both the terms 'secondment' and 'employment' and the approval mechanism by which the respondent invited the claimant to assume the role by applying to the Archbishop. The offer of an employment contract was made by the respondent to the claimant and referred to "duties as provided in the Constitution", rather than saying it would incorporate the Constitution. I note that the letter also references oral negotiations with the Treasurer and is conditional on the secondment.

16. It was not disputed that the day after receiving the letter from the respondent the claimant applied to the Church of Greece for an "Abroad Secondment" (page 130), pursuant to Article 60 of the Constitution of the Church of Greece (page 113). This Article provides that Chaplains or Deacons of the Church of Greece may be seconded to Orthodox churches abroad whilst retaining their full salary.

17. The Archbishop wrote to the claimant on 26 June 2018 notifying him, "*We are temporarily appointing you as the incumbent priest and priest-in-charge of the Holy Three Hierarchs Greek Orthodox Community of Leeds*" and setting out certain duties of the post (pages 139 – 140).

18. The claimant was sent a further letter by the respondent dated 26 June 2018 (pages 143 -144) from the respondent entitled 'Offer letter', saying:

Having received the blessing of our Archbishop Gregorgios of Thyateira and Great Britain on 26/06/2018, we would like to confirm the offer to you by the Greek Orthodox Community of Leeds and Surrounding Districts...of an appointment as the Community's PRIEST and to confirm the principal terms of our discussions. The 'Statement of Contract and Employment Particulars' is attached. This offer is subject to the Company receiving:

- *Job reference(s) from your Bishop which are deemed to be satisfactory as outlined in our letter to you dated 06/06/2018.*
- *An original or certified copy of your Ordination letter...*

- *Relevant documents (certified copy of Passport) proving your legal right to work in the UK.*
- *Proof of address.*
- *Your P45 as soon as you have it available. Otherwise please provide us with a National Insurance number.*

Furthermore, we understand the process of your secondment to the Archdiocese of Thyrateira and Great Britain may take till autumn 2018. Your employment may commence with an official letter of your Bishop allowing you to service in our Community until your secondment is approved. We appreciate your secondment will be approved within the six-month probationary period from the beginning of your contract with the Company. If at the end of the probationary period your secondment is not yet approved, the Company may decide to extend the probationary period or terminate the contract. Please sign and date 2 copies of the 'statement of Contract and Employment Particulars' where indicated to confirm that you understand and accept the offer. ... The 'Statement of Contract and Employment Particulars' along with this Offer Letter, will form your contract of employment. We understand the date on which you are free to commence employment with us to be Sunday 1st of July 2018."

19. I note, again, the use of both 'secondment' and 'contract of employment'. The respondent submitted that I should conclude that the Chairman must have been confused as to the correct approach and that the Statement of Contract and Employment Particulars ("the Contract") offered by the respondent could not represent the true arrangement between the parties, because although the offer purported to be 'as provided in the in-force Constitution', the Constitution adopted by the respondent did not require that a contract of employment be issued to the Priest in charge and only provided for a 'stipend' to be paid, whereas the claimant was issued with a contract providing for payment of a salary. I was not persuaded by that submission, in the main because there was insufficient evidence that the Chairman was confused (see below regarding the respondent's witness evidence) but also because there was insufficient evidence that the definition of a 'stipend' could not include a salary or that the provision of a contract of employment was contrary to the provisions of the Constitution.

20. The Chairman of the Executive Board (who signed the Contract) was not present to give evidence at the hearing. Mr Paschali accepted in evidence that, although he had been a member of the respondent at the time in question, he had very little involvement in the creation of the document as he was not secretary at that time, he could not recall when he had first seen it and, while he had been aware that there was talk of putting some form of contract together, he was not aware of its precise terms until the claimant's claim had been brought and legal advice had been sought. Mr Karageorgis, the current Secretary of the Executive Committee, had no involvement with the claimant's appointment, as he was out of the country at that time and only saw the statement of employment particulars in March or April 2019. His Eminence Archbishop Nikitas was not appointed until a later date. As such, none of the respondent's witnesses were able to give direct evidence of the respondent's intentions at the time it entered into the arrangement with the claimant, none of them having been present or involved in the appointment of the claimant. The only direct evidence from that time can therefore be derived from the documentary evidence and from the claimant himself.

21. I accepted the evidence of Archbishop Nikitas and Mr Karageorgis and Mr Paschali

that they genuinely now believe that the claimant was 'on loan' to the respondent and that the Contract must have been drawn up to enable the claimant to pay tax properly on his salary in the UK. However, I find that their interpretation of the Contract was formed after the event and with the benefit of hindsight in the glare of this litigation.

22. I did not accept Mr Karageorgis' evidence, at paragraph 26 of his witness statement, that "the agreement (the statement of employment particulars) was not entered into with the intention of creating legal relations between the claimant and the Executive/Trustee Committee and our understanding was that after the completion of his secondment, if not renewed by consent, the claimant would return to Greece and his home parish". Mr Karageorgis was not Secretary of the Executive/Trustee Committee at the time the agreement was signed and was not involved in the claimant's appointment. I find that he could not have known what was in the mind of the Executive Committee at the time it was signed. My view is that it is more likely that if, as Mr Karageorgis suggests, the Committee understood that the claimant would be returning to Greece at the completion of his secondment, if not renewed by consent, then that understanding would have been captured in writing in the Contract or the offer letter at that time. Instead, the Contract does not contain any such clause or a reference to a fixed term. Instead it merely refers to a probationary period, on completion of which, subject to satisfactory completion, the implication is that the appointment will become permanent. In my judgment the Committee was entering into a permanent arrangement with the claimant, with the option to terminate if his secondment from Greece was withdrawn.
23. The Contract (pages 145 - 150) itself is a standard form written employment contract. Clause 1 makes reference to the obligation to provide employees with a written statement of the main particulars of their employment as required by Section of the Employment Rights Act 1996. The statement refers to Father Bozos as 'the employee' throughout and the respondent as 'the employer', and refers to 'the employment'. It states, at clause 3.1, "Your employment with the Company will commence on 1st July 2018" and, at 3.2, "You are entitled to receive from the company and are obliged to give to the Company 2 months written notice to terminate your contract of employment". Clause 3.4 reads:
- If for any reason you cease from being a Canonical Orthodox Priest or your secondment to the Archdiocese of Thyateira and Great Britain and Ireland is not in place or terminated, the Company has the right to terminate this contract with immediate effect. The Constitution of the Greek Orthodox Communities of the Sacred Archdiocese of Thyateira and Great Britain and Ireland applicable at that time refers [sic].*
24. The Contract goes on to set out the usual contractual clauses one would expect to find in an employment contract, including place of work, hours of work (37.5 hours per week), remuneration (£25,800 per annum), pension, holidays (28 days), sickness, restrictions and confidentiality, grievance procedure (to the Chairman of the Executive Committee) and disciplinary procedure (the same principles as those already in place for other community employees). Clause 8 refers to duties: "Your duties will be 'Priest in Charge' of the Greek Orthodox Community of Leeds and Surrounding Districts, 'the Three Hierarchs'. The main duties are based on the needs of the Company, and are summarized in Table 1 below. The Constitution of

the Greek Orthodox Communities of the Sacred Archdioceses of Thyateira and Great Britain and Ireland applicable at that time refers” and Table 1 sets out an extensive list of liturgical, spiritual, pastoral, administrative and managerial and social duties. The governing law and jurisdiction is the laws of England and Wales. The statement is signed by Dr Hadjicharitou on behalf of the Executive committee of the respondent.

25. It was not disputed that the claimant was paid a monthly amount by the respondent. Mr Karageorgis characterized this as a ‘stipend’ in his witness evidence, while the Contract called it ‘remuneration’. The claimant received payslips showing the amounts as ‘monthly pay’ (pages 355 to 371). Those payslips named the respondent as his employer, as did his P60s (pages 372 – 375) and his P45 from the respondent (pages 378). In my judgment, these payments were clearly salary payments from the respondent to the claimant, which were remuneration in return for work, as stated in the Contract. The claimant was, as Mr Karageorgis accepted in his witness evidence, responsible for his own accommodation for himself and his family and his other living expenses, such as transport etc. He therefore required a monthly salary from the respondent in order to live in the UK. The payslips, P60s, P45 and other tax documents in the file show that he paid tax and national insurance by PAYE as an employee of the respondent.
26. It was not disputed that the claimant was expected to perform his duties personally. The key area of dispute in relation to the claimant’s role regarded the issue of control. The respondent says it had no control over the claimant’s duties and these were set down by the Archdiocese and the Church of Greece. The claimant’s job title was ‘Priest in Charge’. It was not disputed that, as an ordained priest of the Greek Orthodox Church, the claimant was a religious leader with the authority to perform religious rites. The laity, including in this case the Executive Committee, had limited power to interfere with the claimant’s exercise of his spiritual or liturgical duties and it was clear from Mr Karageorgis’ evidence that there was a level of respect accorded to the claimant as the community’s priest that would be at odds with any interference with the way in which he chose to carry out his ecclesiastical duties. I accepted Mr Karageorgis’ evidence that he considered that the claimant had the freedom to conduct himself in a manner which suited him in the carrying out of his duties (paragraph 40 of his witness statement). Mr Karageorgis referred to the claimant’s duties as being conferred on the claimant by way of Article 8 of the Constitution of the Church of Greece (page 100). I also accepted the Archbishop’s evidence that the claimant looked up to him as the Higher Priest and would seek his expertise in spiritual and liturgical matters.
27. While many of the liturgical and spiritual duties set out in the annex to the claimant’s Contract (page 148) were derived directly from the Constitution therefore, there remained a number of other duties, in particular the Administrative and Managerial and Social duties defined, which did not feature in the Constitution and were only mentioned in the Contract. I find that those duties, such as attending committee meetings, taking care of the cleanliness and appearance of the church interior, equipment and sacred vessels, issuing certificates and keeping records and disseminating information, were imposed on the claimant by the respondent, not by the Archdiocese, the Archbishop or the Constitution of the Church of Greece.

28. The claimant had regular meetings and at least one periodic review appointment with the respondent at which his role in supporting the needs of the community were discussed (page 166). At a meeting on 9 December 2021 a minute of a review meeting between the Committee members and the claimant recorded (page 179):

As a follow-up from Cross committees meeting and feedback from Trustees, as the pandemic measures are being lifted and the situation normalizes, Fr Stavros is required to resume his duties as described in his contract and outlined below:

1. *School Catechisms every other Saturday.*
2. *Church Service at School, once a month on a Saturday.*
3. *Be present at Church premises between 10.30 – 14.30, two days a week in addition to Saturdays and Sundays.*
4. *Be available on the phone daily during 10.30 – 14.30.*
5. *Be immediately available for emergency pastoral visits when required.*

29. I find from the claimant's and respondent's evidence and the documentary evidence relating to his duties and life in the UK with the respondent community that the claimant was fully integrated into the respondent. He was encouraged to move his family to the UK, he bought a house and car, his wife found work and, following her death from Covid during the pandemic, the respondent rallied round and supported him and his young children. He communicated remotely with the Archbishop and the Church of Greece on a regular basis with regard to ecclesiastical issues, but his day-to-day work was as a fundamental key-stone of the respondent's organization.

30. It was agreed that on or around May 2020 the claimant contacted his Archdiocese in Greece to apply to extend his secondment with the respondent for a further 2 years and that extension was approved (pages 158 – 159). The claimant applied for a further extension on 29 April 2022 until August 2024 (pages 218 – 220).

31. During the Covid pandemic the claimant was furloughed from 22 April 2020 until 31 May 2020, although he gave evidence that he continued to minister to his congregation during that time. Mr Paschali, as the Executive Committee Treasurer, wrote a letter on 19 June 2020 for the claimant's mortgage broker (page 157) confirming that the claimant's employment was permanent and full time and would remain so for the foreseeable future. Mr Paschali gave evidence that that letter was a mistake and should not have been worded like that: "It was the wrong thing to do. Now we know what the position is, we should really have thought about it from a secondment point of view". I found that evidence from Mr Paschali significant, as it showed that Mr Paschali's present view of the relationship with the claimant ("Now we know what the position is...") is not the same as it was at the relevant time. The letter represents his genuine view, in my judgment. I find that he understood the claimant's relationship with the respondent to be one of employment and to be on a permanent basis, until such time as the claimant left employment or returned to Greece, for whatever reason. I do not think Mr Paschali was lying or intending to deceive the claimant's mortgage broker when he wrote the letter dated 19 June 2020, nor do I think he misunderstood or mischaracterised the relationship as it stood.

32. The claimant applied to both the respondent and the Archdiocese with annual leave requests. At page 217 the claimant can be seen asking the respondent for “consent” to take leave so that he can “officially request for it in good time”. That suggested to me that the respondent had the actual power to agree or refuse the leave request (which would make sense as it would know the reality of whether the claimant’s services were needed on those days) and the request to the Archdiocese was more of a formality, although the Archdiocese had a veto if it could not provide cover. I find, as a fact, that the claimant was required to apply to the respondent for annual leave, albeit that he was required to also apply to the Archdiocese so that cover could be arranged.
33. The Contract referred to a grievance and disciplinary procedure applicable to the claimant. The respondent’s evidence was that the respondent had no power to discipline the claimant. I find, from the evidence of Mr Paschali, that there was no formal disciplinary process applicable to the claimant in the way one would ordinarily expect for an employee. However, there was a process by which issues were raised with the claimant by the Committee (page 180 - 182), which accorded with the wording of the disciplinary provision in the Contract. In addition, from the correspondence relating to the dispute over the claimant’s conduct of school religious education provision, it appears that there was a process whereby the School and Executive Committees gathered evidence regarding the claimant’s performance and conduct from the Greek School Vice-Chair (page 182 – 183) and Chair of the School Committee (page 210). I find that, by 14 March 2022, relations between the Committee and the claimant had deteriorated to such a degree that the Committee clearly felt that the claimant could not continue in post. The minutes of the Extraordinary EC Meeting of that date (page 213) record that, after the claimant left the meeting the Trustees voted to approach the Archbishop to discuss the ongoing issues between the longstanding community members, the Committee and the claimant. One Trustee suggested putting the issues to the claimant to give him the right of reply, but was outvoted. In my judgment, the implication was that the Committee wished to terminate the arrangement with the claimant.
34. Mr Paschali’s evidence was that the Archbishop asked the Committee members what they wanted and they indicated to him that they wanted the claimant’s position to be terminated. The minutes of the extraordinary meeting of the executive committee and board of trustees dated 20 May 2022 (page 222 – 224) records:
1. *His Eminence listened to our requests and accepted our grievances.*
 2. *We agreed we would send a written summary of the issues we have been facing for the last four years.*
 3. *His Eminence offered us several possible solutions. We unanimously agreed that the best one for the community is that FS’s secondment from the Church of Greece not to be renewed with an appointment in our Community when it came up for renewal in August 2022.*
 4. *His Eminence asked us to confirm the above decision in writing.*
 5. *His Eminence will arrange a meeting with FS to inform him of our common decision.*
 6. *His Eminence gave us his blessing to fill the vacancies for the rest of the AuxC and EC committee without consultation with FS.*

Members discussed and offered clarifications on the details of the meeting.

Proposal by AC:

*Request from the Archdiocese that FS's secondment from the Church of Greece not to be renewed with an appointment in our Community when it comes up for renewal in August 2022. Seconded by GK. Approved unanimously by member present. **Action: GK to send official letter to Archdiocese informing them of the ratified request**.*

35. Archbishop Nikitas informed the claimant on 1 June 2022 that he was appointed with immediate effect to the Greek Orthodox Community in Hull (page 232) albeit that that appointment never took effect. Archbishop Nikitas thereafter suspended the claimant's priesthood. I find from this sequence of events that it was the respondent's decision that the claimant's appointment as Priest in Charge would be terminated.

The law

36. The Employment Rights Act 1996 ("ERA") defines an 'employee' as "*an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment*" (section 230(1)). Section 230(2) defines a contract of employment as "*a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing*". Section 230(4) defines employer as "*in relation to an employee or a worker, ... the person by whom the employee or worker is (or where the employment has ceased, was) employed*". Section 230(5)(a) defines employment as "*in relation to an employee ... employment under a contract of employment*".

37. The fact that the parties to a contract describe the effect of their contractual arrangements in a particular way is not conclusive of the actual effect of the contractual arrangements (**Street v Mountford** [1985] AC 809).

38. In **Consistent Group v Kalwak** [2007] IRLR 560, EAT and [2008] IRLR 505, CA) the EAT (reaffirmed by the Court of Appeal) warned that the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represented what was agreed and the truth of the agreement would often have to be gleaned from all the circumstances of the case, of which the written agreement was only a part.

39. In **Protectacoat Firthglow Ltd v Szilaygi** [2009] IRLR 365:

In a case involving a written contract, the tribunal will ordinarily regard the documents as the starting point and will ask itself what legal rights and obligations the written agreement creates. But it may then have to ask whether the parties ever realistically intended or envisaged that its terms, particularly the essential terms, would be carried out as written. By the essential terms, I mean those terms which are central to the nature of the relationship, namely mutuality of obligation: Carmichael v National Power [2000] IRLR 43 and the obligation of personal performance of the work.'

40. In **Autoclenz Ltd v Belcher** [2011] UKSC 41 the Supreme Court amended that test to emphasize that, if subsequent conduct is to be used, it must still be used to address the question of the parties' own intentions or expectations either initially or in the light of any later variation. The key question therefore is what was the true

agreement between the parties? There is no need to show an intention to mislead anyone, it is enough that the written term did not represent the intentions or expectation of the parties (paragraph 49).

41. In **Uber BV v Aslam** [2021] UKSC 5 the Supreme Court held (in a case concerning ‘worker’ status) that the primary question was one of statutory interpretation, not contractual interpretation. It restated that the general purpose of employment legislation was to protect vulnerable workers and it would be inconsistent with that purpose to treat the terms of a written contract as the starting point in determining whether an individual fell within the definition of ‘worker’. To do so would reinstate the mischief which the legislation was enacted to prevent. It was the very fact that an employer was often in a position to dictate such contract terms and that the individual performing the work had little or no ability to influence those terms that gave rise to the need for statutory protection in the first place. The efficacy of such protection would be seriously undermined if the putative employer could by the way in which the relationship was characterized in the written contract determine, even prima facie, whether or not the other party was to be classified as a worker.

42. In **Ready Mixed Concrete (South East) Ltd v Ministry of Pensions** [1968] 2 QB 497, it was 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 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”.

43. Recent cases refer to a consideration of a combination of factors as the ‘multiple test’. This constitutes a balancing all the factors, including in particular control, personal service and mutuality of obligation, but also other relevant factors, none of which are necessarily determinative in any given case.

44. It is a general rule that a ‘servant cannot have two masters’, although it is possible to have different employers for different jobs or severable parts of the same contract of employment with one employer. I asked the parties for their additional written submissions in relation to the case of **The Prison Officers Association & Ors v S J Gough and 1 or** [2009] UKEAT 0405/09 in which an employee was found to have two employers, and I was grateful to receive further written submissions from both parties, which I have incorporated into these reasons.

45. The respondent reminded me of the case of **Patel v Specsavers Optical Group Ltd** UKEAT/O286/18 (13 September 2019, unreported), in which the EAT held it is, in general, impossible in an employment law context for an employee to be employed by two companies in respect of the same employment contemporaneously, although in the context of vicarious liability in tort, in the area of ‘borrowed servant’ cases it did occur. The general rule was subsequently applied in **Fire Brigades Union v Embury** [2023] EAT 51, [2023] IRLR 520, to hold that a firefighter employed by the London Fire Brigade could not also be an employee of the union when seconded to it full time. Judge Stacey in **Patel** cited policy reasons for the rule against more than one employer including some of the practical

complications that would flow from a finding of dual employment given the structure of the Employment Rights Act 1996. It is possible that there can be a) separate contracts of employment with more than one employer in relation to the same work or b) severable contracts with the same employer.

Determination

46. In making my judgment I have considered all of the evidence before me, taken account of the parties' useful submissions and weighed all of the factors I considered relevant, applying the burden of proof of the balance of probabilities to reach my conclusion. This has been a finely balanced decision, with factors weighing in both directions which in part explains the delay in promulgation of the decision, for which I offer my sincere apologies to the parties.
47. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the Tribunal must consider in order to decide if the claimant is an employee of the respondent or not. If I have not mentioned a particular point it does not mean that I have overlooked it. It is simply because it is not relevant to that issue.
48. It is agreed that the claimant was at all material times receiving a salary and pension from the Greek state, as a priest of the Church of Greece (Metropolis of Mesogaia and Lavreotiki) ("the Church of Greece"). The claimant acknowledges that he came to the UK on 'secondment' from the Church of Greece. He was appointed to the secondment by the Archbishop at the time, Archbishop Gregorios, and he deferred to the authority of the Archbishop in all ecclesiastical matters. When his secondment was due for renewal he applied to the Archbishop for renewal, and the respondent's committee members approached the Archbishop for advice and assistance when they had concluded they no longer wanted the claimant to minister to their congregation. These facts weigh in favour of the conclusion that the claimant could not be an employee of the respondent.
49. The respondent's case is indeed that the claimant was employed by the Church of Greece, not the respondent and that the terms of the Contract are ambivalent as to whether the claimant was operating under a contract of employment or a secondment from the Church of Greece. The respondent says it cannot be both: the existence of the Contract might be a convenient starting point but it cannot be determinative of the question of status; the Tribunal must analyse the underlying facts to determine the correct basis upon which the claimant worked for the respondent. I agree, but see my comments below on 'sham' contracts.
50. What was not clear from the respondent's evidence or submissions was whether the secondment was said to be from the Church of Greece to the Archdiocese of Thyateira and Great Britain or to the respondent (the Greek Orthodox Community of Leeds) or to both those bodies. The former is a metropolitan of the Church of Greece, whereas the latter is a registered charity in Leeds. The precise legal personality of those bodies remains unclear to me, although I invited the respondent to clarify its legal status at the outset of the preliminary hearing, but Mr Howells was not in a position to do so. We agreed that, if the claim is to proceed, the respondent will identify the correct legal personality for the purposes of responding to the claim.

51. As noted above, it was not disputed that the claimant continued to receive remuneration and a pension from the Greek Government during his time in the UK and, it was anticipated, would have a position to go back to in Greece if or when his work in the UK ended. However, I do not consider that that is necessarily determinative in preventing an employment relationship developing with the respondent in the UK.
52. Nowhere in the Employment Rights Act 1996 is the term 'secondment' defined and it is not, to my knowledge, nor was it submitted that it is, a legal term of art. One dictionary definition is "the temporary transfer of an official, worker or employee to another position or employment". Now that relations with the claimant have turned sour, the respondent is naturally focused on the temporary element of the arrangement. However, what is relevant for my determination is not what the parties believe at the present time, but what the parties believed about their relationship at the time it commenced and during its currency. That required a close examination of the arrangements at the time the claimant arrived in the UK, and during his work for the respondent.
53. The respondent's submissions also focused on the likelihood of an employment relationship between the claimant and the Church of Greece, excluding the possibility of any employment relationship between the claimant and the respondent. The key focus of the respondent's submissions was therefore on the claimant's relationship with the Church of Greece. While I recognize that that is relevant and is a factor which I must take into account, in my judgment the primary focus of my analysis must be on the claimant's relationship with the respondent, through the lens of section 230 of the Employment Rights Act 1996: Was the respondent the claimant's employer under section 230? Was there a contract of employment between the claimant and respondent? Was the claimant an employee of the respondent? While the claimant's relationship with the Church of Greece and/or the Archdiocese of Thyateira and Great Britain is relevant, they are not a party to the claim and that relationship is not the subject of this preliminary hearing.
54. The starting point in the relationship between the claimant and the respondent is the Contract. The respondent submitted that clause 3.4 of the claimant's Contract reserved the right for the respondent to terminate the Contract with immediate effect if the Claimant ceases to be a Canonical Orthodox Priest of his secondment to the Archdiocese ends (page 146). The respondent submitted that the continuation of the Contract was therefore inextricably linked with the existence of the secondment. I accept that, were that the case, it would suggest that the respondent viewed the arrangement as temporary from the outset. However, Clause 3.4 merely gives the respondent the right to terminate the claimant's appointment. It does not state that the appointment will be or must be terminated. Without meaning any disrespect to the claimant's Church or position, similar provisions can be found in contracts for doctors or other professionals, stating that if they lose their professional registration the employer reserves the right to terminate their employment. It does not necessarily mean that the professional will be dismissed if they lose their registration however, as there is a discretion not to dismiss and, for example, alternative work may be available. The claimant passed his probation period and, according to the contract, his appointment therefore became permanent, subject only to him or the respondent terminating it with the appropriate notice.

55. Clause 3.4 of the Contract is ambiguous in relation to the status of the Constitution of the Church of Greece. The respondent's submissions were, in essence, that the Constitution of the Church of Greece was the governing document and, therefore the Church of Greece was the employer. However, clause 3.4 does not incorporate the Constitution. It merely 'refers' to it, implying that the Constitution is to be used for 'reference' purposes. Applying the 'contra preferentem' rule, any ambiguity should be construed against the party who drafted the clause and seeks to rely upon it. On balance, I find that the Constitution of the Church of Greece is not incorporated into the Contract, although that document allows for reference to be made to the Constitution. That accords with the general tenor of the Contract and the findings on the issue of control set out below.
56. In every other regard, I find that the Contract is a contract of employment. Its terms are the terms one would expect to find in a Statement of Employment Particulars under section 1 of the Employment Rights Act 1996, drafted with the intention of creating an employment relationship between the respondent and the claimant.
57. Were this a commercial law case that would be the end of the enquiry: The 'parol evidence rule' would mean that no extrinsic evidence would be admissible to help interpret the written contract and, absent a plea that it contained a rectifiable mistake or there was a common intention to mislead, it would be impermissible to depart from the clear wording of that contractual document. However, in employment law, the position is not that simple and the question of employment is primarily a statutory one. Therefore, the context, the parties' intentions and the meaning that the written contract and its terms would convey to a reasonable person who appreciates the context are all relevant. Where there is ambiguity, it must be construed in the context of the whole contract and the factual matrix or circumstances surrounding it. The written contract may not reflect the true position between the parties and, ultimately, may only represent evidence of the true relationship between the parties. The question, going back to section 230 ERA, is whether there is a contract of employment, not whether there is a *written* contract.
58. The respondent submitted that the Contract did not reflect the true agreement between the parties, as per **Autoclenz** and **Protectacoat**. I accepted that the Church of Greece and the Archdiocese did not intend there to be an employment relationship between the claimant and the respondent. The respondent submitted that the Contract was not intended to confer employment rights upon the claimant but, misguidedly, was used as a mechanism by the respondent to ensure that any money paid to the claimant was accounted for, in other words a 'sham' contract. The evidence of the respondent's witnesses largely supported that submission, although they accepted that other priests had not received any contractual documentation when they were seconded. However, none of the respondent's witnesses at the hearing were involved in the appointment of the claimant, nor were they actually present at or party to the preparation or signing of the statement of employment particulars. The only reliable evidence in relation to the claimant's appointment available to me was from the claimant himself and the documents. I was therefore cautious about accepting the witness evidence of the respondent's witnesses on the topic of what the respondent intended at the time the claimant was appointed, as it could only be hearsay and, while I had no reason to doubt their honesty, their views were clearly formed through the lens of the current legal dispute with the claimant.

59. I therefore preferred to rely on the documentary evidence from the time of the claimant's appointment. The first offer letter (pages 126 – 127) showed the respondent expressing an intention to offer the claimant a full time employment contract in the near future, having voted to ask the Archbishop to give his blessing for the claimant to be seconded to them. The contract was expressed to be conditional on receipt of a reference and on the secondment being agreed. The claimant was told that it would include everything orally agreed with the respondent's Treasurer and would include the 'duties as provided in the ...Constitution'. In my judgment this appeared to make a clear distinction between the secondment, as a formality releasing the claimant to represent the Church abroad, and the agreement governing the claimant's relationship with the respondent, which would set down in writing everything that had been negotiated by the claimant and the Treasurer. The Constitution was only referenced in terms of defining the claimant's duties. The second offer letter (pages 143 to 144) recorded the respondent informing the claimant that the secondment had been approved (i.e. he had been released to them) and they wanted to offer him the position. Again, the Contract was subject to references and provision of a P45 and other conditions. The letter noted that he could start work before the secondment was finally approved and that, if the final approval did not come through before the end of his probation period, the respondent had the right to terminate his employment (as discussed above). In my judgment, the offer letters suggested that the respondent intended to create legal relations with the claimant. There was no evidence in the contemporaneous documentation that the Contract was used as a mechanism by the respondent to ensure that any money paid to the claimant was accounted for or that it was intended to be anything other than a contract of employment.
60. Further, and separately, Mr Paschali's letter (page 157) written on 19 June 2020 held the claimant out as an employee. I did not consider that Mr Paschali was lying or trying to deceive the claimant's mortgage broker, but honestly believed the relationship between the claimant and the respondent to be one of employment (see my findings of fact at paragraph 31 above).
61. The respondent submitted that the Contract must be a mistake because it did not reflect the reality of the relationship between the parties. It is interesting to note that the case law on 'sham contracts' almost exclusively concerns the protection of the employee in the context of the unequal bargaining power of the parties. In this case, however, it is the claimant who seeks to rely on the contract which was drawn up by the respondent, and the respondent who seeks to argue that the contract is a 'sham'. In my judgment, in light of the sentiments of the Supreme Court in the **Uber** case (referred to above) it would be inappropriate to "reinstate the mischief which the legislation was enacted to prevent" by applying too strictly the very case law intended to protect the employee from that mischief. In any event, in my judgment, there is no need to construe the Contract or look behind the Contract because, on the facts as I find them, it reflected the reality of the relationship between the parties in any event. It may not have reflected what the Archdiocese believed or intended to be the reality, but it reflected the reality and intention of the claimant and the respondent, in my judgment.
62. Turning to the facts of the claimant's relationship with the respondent, and the tests set out in **Ready Mixed Concrete**, the parties were agreed that there was a requirement for mutuality of obligation and personal service. The Contract reflected

the true situation, in that the claimant was required to carry out his duties himself and there was a duty to provide work and a duty on the claimant to do that work. The area of dispute was the issue of control. Control requires that ultimate authority over the purported employee in the performance of his or her work rests with the employer.

63. The respondent made forceful submissions in relation to the issue of ecclesiastical hierarchy and how this ran contrary to the notion that the Community could be the Priest's 'master'. Mr Howells cited a number of examples where the claimant in practice would have to defer to his ecclesiastical masters, and I agree that, where liturgical and spiritual matters arose, that was clearly the case. The Archbishop exercised a considerable degree of control over the claimant, as would be expected by the leader of a church over its clergy. The claimant recognized that authority: "*Nevertheless, I have and I will obey His Eminence's orders, oral or in writing*" (page 239) but, in my judgment that, in and of itself, does not prevent the relationship between the claimant and the respondent being one of employment in the present context. The claimant was under the authority of the Archbishop and the Church of Greece in all matters ecclesiastical, for example how services would be conducted. However, in my judgment that is not determinative, but rather broadly analogous to the regulation of doctors by the General Medical Council. An NHS Trust would not necessarily dictate how a doctor conducts their practice, but the GMC might. A firm of solicitors might not dictate how a solicitor manages client accounts, but the Solicitors Regulatory Authority might. The Archdiocese is not, of course, a regulatory body and there are limits to the analogy but there are no doubt other examples of specialist professions or vocations where an employer may not have complete control over the work of the employee because they do not share the skills, vocation or specialism of their employee. An employer does not always direct the day-to-day work of its employee. The question is whether the respondent has a sufficient degree of control for it to be the claimant's employer. As 'priest in charge' it would be surprising if the claimant did not have a large degree of autonomy in how he carried out his duties, and surprising if he did not defer to a degree to the teachings of the Church of Greece and his superior priests.
64. I find that the respondent exercised direct control over the claimant's work. The practical arrangements relating to the claimant's work in the UK were decided in the main by the respondent's committee. The duties set out in the Annex to the Contract were derived solely from the respondent, not the Constitution (paragraph 27 above). It was clear from the Annex to the Contract and the later correspondence, that the respondent gave the claimant instructions on what to do and how to carry it out (paragraph 28 above). The letter at page 179 represented a clear example of the respondent instructing the claimant on what to do and how to do it. When the respondent considered that the claimant was not carrying out his duties as expected, the respondent took action against him (see my findings of fact at paragraph 33 and 34 above), by the mechanism of approaching the Archbishop. In fact, according to the Contract, the respondent could have terminated the claimant's employment itself, but the fact it chose to do so in consultation with the Archbishop was, in my judgment, a matter of choice, not compulsion.
65. Mr Howells submitted that for the claimant to continue working for the respondent he had to apply to the Church of Greece, either the Holy Synod or the Archdiocese to extend his employment and that shows the fallacy of the claimant's case that this was an employment relationship: It is inconceivable that an employee would be

required to apply to a third party to seek approval for the extension of their employment. Mr Howells submitted it would be extraordinary if a contract of employment could be effectively terminated because a secondment agreed between third parties had ended. I agree that this appears to be inconsistent with a contract of employment with the respondent. However, my findings of fact are that the claimant did not have to apply to the Church of Greece to extend his employment. He had to apply to the Church of Greece to extend his secondment from the Church of Greece, but this was not the same as his arrangement with the respondent. The Contract was clear that, as regarded the probation period, if the secondment was not yet approved by the end of the probation period, the respondent had the discretion to terminate or continue the Contract. The respondent therefore had the power under the Contract to employ the claimant without the secondment being approved. In fact, at the commencement of his relationship with the respondent the secondment had not been approved. He therefore entered into the relationship with the respondent without the secondment formally being in place. I find, on that basis, that the relationship with the respondent was a separate arrangement and not inherently dependent on secondment from the Church of Greece.

66. I find that the respondent appointed the claimant on a permanent basis. The claimant had to apply to the Church of Greece for a renewal of his secondment from the Church of Greece and his appointment to the respondent was expressed to be conditional on that renewal being agreed. The respondent had the right to terminate the claimant's employment if his secondment was not renewed, but it was not required to terminate the employment. The arrangement between the claimant and the Church of Greece was not incompatible with an employment relationship between the claimant and the respondent, in my judgment. The respondent had the right to dismiss the claimant. As it turned out, the respondent did in fact make the decision to terminate the claimant's employment, albeit that they did so through the mechanism of a meeting with the Archbishop. But it was the respondent's committee, voting to take action to terminate the claimant's appointment, who were the decision makers.
67. Although the claimant was required to apply to both the respondent and the Archdiocese for annual leave, and the Archdiocese had the right of veto, this was for practical purposes because it was the Archdiocese who would be responsible for providing a replacement priest. That arrangement was not inconsistent with the respondent being the claimant's employer. The same would apply to sickness arrangements in my view, although there was no evidence of the claimant ever having taken sickness leave. The fact that the claimant was furloughed by the respondent during the Covid pandemic is strong evidence in my judgment that he was under the control of the respondent.
68. In my judgment, the claimant was fully integrated into the respondent's organization (see my findings of fact at paragraph 29 above), in so far as it was appropriate within his religion for a priest to be integrated. He had a written contract of employment which, I find, was genuinely intended to create legal relations and reflected the terms of the relationship between the parties which existed in fact. Applying the **Ready Mixed Concrete** test and other case law, and taking account of all of the factors relevant to the relationship between the claimant and the respondent, including the written Contract, I find that the claimant was an employee of the respondent, according to the definition in section 230 ERA.

69. There are two further points I should address: Firstly, I asked the parties for further submissions in relation to the question of whether this might be a rare case in which the claimant was an employee of two employers. The Respondent reminded me of the long-standing principle that an employee cannot be employed by two or more employers at the same time and in respect of the same work (**Patel**) and (**Embery**) and the errors identified in respect of employment law in the case of **Gough**. I agree that, following those cases, the claimant cannot be a 'servant of two masters' no matter how convenient that solution might appear. However, on the balance of probabilities, it was not necessary to reach that conclusion on the facts of this case. The Contract reflected, in the main, the realities of the agreement between the parties and that agreement was that the respondent had control over the claimant so far as was appropriate for a role of that nature. Moreover, the claimant was fully integrated into the respondent and the respondent ultimately exercised control over whether the claimant continued in his position in Leeds. The claimant's secondment from the Church of Greece and/or the Archdiocese was legally opaque and, ultimately, not the subject of my enquiry under section 230 ERA.

70. Secondly, the respondent referred me to the first instance decision of Father **Kosmas Pavlidis v The Trustees of the Greek Orthodox Community in Birmingham** (3 November 2019) in which it was held that the priest was not an employee of the respondent. That was, of course, a first instance decision and therefore not binding. On the facts of that case, the relationship between the parties was quite different: there was no contractual documentation setting out the relationship, let alone anything purporting to be a contract of employment. Further, the 'hosting' arrangement was clearly just that: the priest's accommodation was arranged by the local community and he was loaned a car by the local community. The respondent's witnesses in this case gave evidence that there were different arrangements put in place for different priests and, in my judgment, this is an example of just such a different style of arrangement and the first instance decision was therefore not helpful to me.

71. I concluded that the claimant's relationship with the respondent was one of employment. He was working under a contract of employment. The claimant was therefore an employee for the purposes of section 230 of the Employment Rights Act 1996.

Employment Judge Bright
25 January 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....

.....
FOR EMPLOYMENT TRIBUNALS

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>