



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Geoffrey Bown

**Respondents:** Victoria Mills Management Limited

## Record of an Attended Full Hearing heard at the Employment Tribunal

**Heard at:** Nottingham

**On:** 1 December 2021

**Reserved to:** 14 December 2021 (in chambers)

**Before:** Employment Judge Blackwell (sitting alone)

### Representation

**Claimant:** In person, supported by Mrs Susan Bown (Claimant's wife and McKenzie Friend)

**Respondent:** Mr Barber, Solicitor

# RESERVED JUDGMENT

1. The Claimant is not an employee within the meaning of Section 230(1) of the Employment Rights Act 1996 (The 1996 Act) and given that he does not contend that he is a worker within the meaning of Section 230(2) of the 1996 Act all of his claims are therefore dismissed.

# RESERVED REASONS

1. Mr Bown was in person supported by his wife and McKenzie friend Mrs Susan Bown and he gave evidence on his own behalf. Mr Barber, Solicitor represented the Respondents and he called Dr I Milner a Director of the Respondent Company. There was an agreed bundle of documents and references are to page numbers in that bundle.

## Introduction

2. This matter was originally intended to be heard in full on 1 July 2021 but was converted to a Preliminary Hearing largely because of technical difficulties. Employment Judge Smith identified the issues at paragraphs 9 to 19 of a summary and orders sent to the parties on 7 July 2021.
3. At para 9 he records “was the Claimant an employee of the Respondent within the meaning of the Employment Rights Act 1996 Section 230 subsection 1.

If the Claimant was not an employee of the Respondent his claims fall to be dismissed in the entirety given that he does not contend in the alternative that he was a worker within the meaning of Section 230 subsection 2”.

4. Thus, it is common ground that all of Mr Bown’s claims fall to be dismissed if he is not an employee. Section 230(1)(2)(3) read as follows:

*“1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*

*(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*

*(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

*(a) a contract of employment, or*

*(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

*and any reference to a worker’s contract shall be construed accordingly”.*

5. As to case law there is a plethora of authority, but I begin with the much cited case of **Ready Mix Concrete (South East) Ltd v The Minister of Pensions and National Insurance 1968 1 All ER433** in which Mr Justice McKenna set out the following three questions:

*“Did the worker agree to provide his or her own work and skill in return for remuneration?*

*Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of master and servant?*

*Where the other provisions of the contract consistent with it being a contract of service?”.*

## Findings of Fact

6. The relationship between the parties began in 2000. The written contract is at pages 45 and 46 and is undated. It is headed “Site Manager’s Contract” and it was agreed that there would be a monthly payment of £400 raised in stages over the years

to £800. At that time there were two Site Managers who both signed the contract, Mr Bown and Miss Hyde who later became Mrs Bown. Mrs Bown carried out some duties up to 2008.

7. The Respondent is a management company overseen by three volunteering Company Directors, Dr Milner, Mr Norminton and Mr Needham. The Respondents manage Victoria Mills and Victoria Wharf blocks of residential apartments on one site in Grimsby. The Respondents are funded by the residents of the apartments by paying a service charge and have the duty to ensure that common areas of the buildings are properly maintained.

8. In 2004 Mr Keith Wright became Director of the Respondents and his wife Mrs Lesley Wright became Company Secretary and it was he who drafted and signed the contract at pages 45 to 46.

9. The relationship between Mr Bown and the Wright's was a good one. Mr Bown gave evidence that the Wrights would at times assist him in his duties and he would assist them in other ways. The Wrights left the Company in 2015 and Mr Bown in his evidence says that things then changed, and he was left very much to his own devices.

10. Those duties are largely set out in the contract at pages 45 and 46.

11. Mr Bown would also provide additional services that were out-with the usual duties under the contract.

12. Mr Bown raised monthly invoices for the usual duties see for example page 52 and then in long form at page 56. Invoices were in the names of either Ground and Building Maintenance Services or G Bown. The normal duties invoices were settled by standing order without query. No deductions were made for tax, national insurance and there was no pension contribution.

13. There were also invoices for "extra duties" see for example page 118. On occasions after the end of the Wright regime extra duties invoices were queried by Mr Norminton.

14. The great majority of the tools necessary for the execution of the Site Managers duties were provided by the Respondents.

15. Mr Bown worked two full days or four half days largely at his discretion subject to the supervision of contractors or visits of utility companies. At the second page of the contract appears the following: "28 days annual leave (site managers only)". I accept that throughout the relationship Mr Bown's submitted 12 monthly usual duties invoices for the full amount prevailing at that particular time. Based on the documentary evidence Mr Bown decided when he went on leave but did inform the Respondents see page 51.

16. Mr Bown operated a sign manufacturing business on his own account between 1998 and 2010. Mr Bown also worked for at least five other clients including Dr Milner carrying out general maintenance and garden duties. He issued invoices to each of his

clients see for example those to Dr Milner at pages 249, 250, 251 and 252 totalling over £1500 in between May and July of 2019.

17. The contract makes no reference to substitution and substitution was a matter never discussed between the parties and indeed probably never contemplated by the parties.

### **Conclusions**

18. Mr Bown's submits he was an employee for the following reasons:

1. That the contract is a contract of employment which gave him 28 days annual leave for which he was paid.
2. The contract stated that he was to receive 30 days' notice which was honoured.
3. He was provided with the tools to carry out his tasks.
4. The company supplied all the materials for the jobs.
5. He was provided with a Company cell phone so that he could react to call outs and to perform his other duties.
5. He was made a signatory on the Companies B&Q account.

19. The Respondent's submit that Mr Bown was a self-employed contractor relying on the invoicing, the fact that there were no tax and national insurance deductions and no pension arrangement. They also argue that how Mr Bown worked and when he worked was at his discretion and that therefore they did not have sufficient control over him. In summary their case is that Mr Bown was in business on his own account as opposed to being an employee.

20. It is not in dispute that Mr Bown provided his own considerable work and skills in return for remuneration.

21. As to the second test of control the evidence is somewhat limited. It is clear that Mr Bown carried out his duties largely when and how he determined. It also appears that during the Wright regime there was a degree of the Directors and Mr Bown working together. Thereafter both Dr Milner and Mr Norminton have queried a number of "extra duties" invoices but as Mr Bown himself said he has been left largely to get on with his tasks. On the basis of that limited evidence I am not satisfied that there was a sufficient degree of control for the relationship to be one of employer and employee.

22. As to the other provisions of the contract it is as both sides recognised ineptly drafted and in my view without any thought as to the status of Mr Bown. However, taken as a whole it is not consistent with the provisions of a contract of employment. It does not, for example, deal with many of the particulars of employment required by Section 1 of the 1996 Act.

23. I put some weight on the fact that for a time Mr Bown ran his own sign manufacturing business and throughout the relationship had a number of other clients who he invoiced in the same way as he invoiced the Respondents.

24. On balance I consider that Mr Bown was in business on his own account largely carrying out general maintenance duties for a number of clients. I therefore find that he is not an employee within the meaning of Section 230 of the 1996 Act.

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Employment Judge Blackwell

Date: 22 December 2021

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