EMPLOYMENT TRIBUNALS

Claimant: Mr K B Rathod

Respondents: (1) Clinica Private Healthcare Limited
(2) Ms T Farquar

Heard at: London Central (by Cloud Video Platform)

On: 9 September 2024

Before: Employment Judge Joffe (sitting alone)

Representation

For the claimant: Ms H Abas, counsel
For the respondent: Ms B Omotosho, tribunal advocate

JUDGMENT ON APPLICATION FOR INTERIM RELIEF

1. The claimant's application for interim relief is well-founded and is upheld.

2. The Tribunal can lawfully make an order for continuation of the claimant's contract of employment pursuant to section 130 Employment Rights Act 1996.

3. The claimant's contract of employment continues in force for the purposes set out in section 130(1) Employment Rights Act 1996 from 8 November 2023 until the determination or settlement of the complaint.

4. The first respondent must by 7 October 2024 pay the claimant the sum of £16,900.97 in respect of payments which the claimant could reasonably have been expected to earn during past pay periods from 8 November 2023 until 20 August 2024.

5. The first respondent must pay the claimant the sum of £1703 on the 30th of each month during the period from today's date until determination or settlement of the complaint.

RESERVED REASONS

Issues

1. For reasons which are contained in the Case Management Summary sent to the parties on, 14 June 2024 this interim relief hearing has been conducted in two parts; on 7 June 2024, I considered whether the claimant had met the threshold for an order for interim relief and concluded that he had. Reasons for that conclusion are set out in the Case Management Summary. A hearing was listed on 29 July 2024 to consider the issue raised by the respondents as to whether an order for continuation of the claimant's contract could lawfully be made. That hearing unfortunately was not effective due to the sudden ill health of the respondents' representative, and the hearing today was the adjourned hearing.

2. The issues which I had to consider today were as follows:

    a. Whether I could lawfully make an order under section 130 Employment Rights Act 1996 given that the claimant's employment by the first respondent was under the visa scheme for healthcare workers, the respondents had cancelled the claimant's certificate of sponsorship on 8 November 2023 and the Home Office had removed the first respondent from the register of licensed sponsors on 3 June 2024;
    b. If I could lawfully make a continuation of contract order, what period the order should be made for;
    c. What provisions for payment should be made as part of a continuation of contract order.

Findings

<u>The hearing</u>

3. I was provided with a bundle of documents running to 207 pages which included documents relating to the claimant's certificate of sponsorship, to the revocation of the first respondent's licence and some Home Office guidance for sponsors of workers from abroad. Some reference was also made in submissions to documents from the original bundle and the witness statements provided on that occasion.

4. Both parties provided written skeleton arguments and made oral submissions. I did not hear any evidence.

Evidence about sponsorship

5. The claimant had a certificate of sponsorship dated 21 January 2023. The applicable tier was described as 'Skilled worker (New hires – defined)'. The sponsor was the first respondent.

6. I saw a screenshot which appeared to show that the first respondent had informed the Home Office that it had stopped sponsoring the claimant on 8 November 2023.

7. There was a letter from the Home Office to the respondents of 3 June 2024. It appeared from this letter that the Home Office had sought information from the respondents about concerns it had about whether the first respondent had full responsibility for its migrant workers. The information had been considered and a decision made to revoke the first respondent's sponsor licence with immediate effect because Annex C 1 x) of the Workers and Temporary Workers Guidance for Sponsors (Part 3) provides for revocation of a sponsor's licence if 'you are, or you are acting as, an employment agency or business and you have supplied a worker you are sponsoring to a third party as labour'.

8. The Home Office pointed to s 1.29 of the Workers and Temporary Workers Guidance for Sponsors (Part 2):
You cannot sponsor a worker if you will not have full responsibility for all the duties, functions and outcomes or outputs of the job they will be doing, or if-
• the job amounts to the hiring out of the worker to another organisation (third party) who is not the sponsor to fill a position with them, whether temporary or permanent, regardless of any genuine contract between you and the third party; or
• the worker will be contracted to undertake an ongoing routine role or to provide an ongoing routine service for a third party who is not the sponsor, regardless of the nature or length of any arrangement between you and the third party.

9. I should note that it is the respondents' position in these proceedings that the claimant had been employed to be supplied to work for third parties.

10. The effect of revocation on sponsored employees was as follows:

After the date of revocation, they will later be notified that their permission to stay in the UK has been shortened, during which time they can either seek an

alternative way to regulate their stay including seeking employment at a different sponsor or leave the UK. Their permission will normally be shortened to 60 days, unless a sponsored worker has less than 60 days permission remaining at the time that cancellation action is considered we will not alter that permission. The only exception is where a sponsored worker is deemed as complicit in the reasons for the revocation.

Evidence about pay

11. The offer of employment between the claimant and the first respondent which was provided specified that the claimant was a full time healthcare assistant reporting directly to the 'on duty manager of the Ealing branch'. His hours of work were specified and he was to receive a starting salary of £23,322 to be paid on a monthly basis.

12. In the contract of employment, the claimant's normal place of work was specified as the first respondent's premises in Ealing and the claimant was told his annual salary would be £23,500. The claimant would be paid on the 30th of each month or the next working day where the 30th fell on a weekend or bank holiday.

13. It should be noted that I was provided with no document which showed that the bargain between the first respondent and the claimant was that the first respondent would be providing his services to third parties and that his hours and pay would vary depending on what work was provided to third parties. Ms Omotosho told me her instructions were that a contract in those terms existed but no such contract was ever produced.

14. Three payslips were provided for August, September and October 2023 which purported to show that the claimant was paid £345 gross in each of those months being £11.50 per hour for thirty hours work. The claimant in his witness statement said that he was never provided with any work by the respondents nor did he receive any pay from the respondents.

Law

15. It is convenient to set out the following sections from the Employment Rights Act 1996 which define the Tribunal's powers in respect of interim relief. Section 129 deals with the threshold for granting interim relief and sets out the process which the Tribunal must follow in order to make an appropriate order having determined that threshold has been met:

129.— Procedure on hearing of application and making of order.

(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—
(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.
(2) The tribunal shall announce its findings and explain to both parties (if present)—
(a) what powers the tribunal may exercise on the application, and
(b) in what circumstances it will exercise them.
(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or
(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
(4) For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
(6) If the employer—
(a) states that he is willing to re-engage the employee in another job, and
(b) specifies the terms and conditions on which he is willing to do so,
the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
(8) If the employee is not willing to accept the job on those terms and conditions—
(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
(b) otherwise, the tribunal shall make no order.
(9) If on the hearing of an application for interim relief the employer—
(a) fails to attend before the tribunal, or
(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),
the tribunal shall make an order for the continuation of the employee's contract of employment.

16. Section 130 defines what an order for continuation of contract is:

130.— Order for continuation of contract of employment.
(1) An order under section 129 for the continuation of a contract of employment is an order that the contract of employment continue in force—
(a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and
(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,
from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
(3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
(a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
(b) in the case of a payment for any past period, within such time as may be specified in the order.
(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
(7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

17. Section 131 makes provision for variation or revocation of continuation of contract orders:

131.— Application for variation or revocation of order.
(1) At any time between—
(a) the making of an order under section 129, and

(b) the determination or settlement of the complaint,
the employer or the employee may apply to an [employment tribunal]1 for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
(2) Sections 128 and 129 apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

18. There is limited authority on these sections and in particular as to the nature of the relationship created by a continuation of contract order and as to the interpretation of sections 130 and 131.

19. Dowling v M E Ilic Haulage and another UKEAT/0836/03/ILB was a case about whether liability under a continuation of contract order transferred under TUPE. In considering the materially identical provisions of TULR(C)A 1992, Burton P approved the decision of the Tribunal that:

11.1….Section 164(1) of the 1992 Act "refers to "from the date of its termination", thus recognising that the contract of employment has been terminated, and it implies statutory continuation for two specific purposes only and no more", being the two purposes identified in (a) and (b) of that subsection.

11.2 (Paragraphs 6 to 8) "The consequent relationship is purely statutory and unilateral: it is a 'contract of employment' for the purpose of the interim relief provisions only". No benefits or rights are provided to the employer: there is no quid pro quo in the form of provision of labour or any other service. The relationship thus created is not a contract of employment as defined by s230 of the Employment Rights Act 1996 (under which Act the Applicant was, by express reference in section 167(1) of the 1992 Act, claiming unfair dismissal) namely:
"In this Act, 'contracts of employment' means a contract of service ... , whether express or implied and (if it is express) whether oral or in writing." The Chairman concluded that "under the interim order Mr Dowling was not required to serve. An 'employee' is defined by the [1996] Act as 'an individual who has entered into or works under a contract of employment". Mr Dowling neither entered into nor worked under the statutorily continued contract. The contract as defined by s230 came to an end in December 2002." She continued: "Nor is the relationship a contract of employment as defined by Regulation 2 of [TUPE] which requires determination of terms and conditions by agreement not by statute. The agreed terms and conditions came to an end in December 2002."

20. Burton P then concluded at paragraph 24:

24.1 I am satisfied that what is effected by the Continuation Order is not only not a contract of employment within s230 of the 1996 Act or Regulation 2(1) of TUPE because of what Dr Davies called the "purely statutory and unilateral [because no service was required]" nature of it. It is wholly different from the

examples referred to in Miss Morris' third submission, of employees whose contracts of employment have not terminated but in which they are absolved from providing services under the contract by the terms of it, or some statutory implication into it. Those who are the subject of a Continuation Order are ex-employees, whose contracts have terminated, such that, as Mr Dulovic put it, there is no subsisting contract of employment upon which Regulation 5(1) can have any effect (as in Secretary of State for Employment v Spence [1986] ICR 651). The Continuation Order could be revoked by application under s165(1) of the 1992 Act, set out in paragraph 4 above "on the ground of a relevant change of circumstances since the making of the order".

21. In Langton v The Secretary of State for Health UKEAT/0376/13/JOJ, the EAT considered an application for interim relief (in this case made under the Employment Rights Act 1996) made in the context of an NHS trust employer which had been abolished. Residual liabilities lay with the Secretary of State for Health and the Secretary of State had successfully applied to be substituted as the respondent to the claim. The tribunal at first instance accepted the respondent's submission that no continuation of contract order could be made in circumstances where the employing trust no longer existed. As the Secretary of State was not the employer of the claimant, no such order could be made against him.

22. HHJ Peter Clark concluded that an order for continuation of contract could be made against the Secretary of State:
As Burton P made clear in Dowling v ME Ilic Haulage [2004] ICR 1176, the effect of a continuation order is not to create a new contract of employment, the old contract having necessarily ended before an interim relief application could arise, but simply to preserve the claimant's right to pay and other benefits enjoyed under the terminated contract of employment and to deal, if necessary, with the question of continuity of employment (see section 130(1)). The Judge is not, therefore, being asked to order the Secretary of State to enter into a contract of employment with the Claimant, as indeed he and the parties recognised (see Reasons, paragraph 12)
[Para 16]

23. On the issue of whether a tribunal has any discretion as to the period of a continuation of contract order and as to the circumstances in which such a period might be varied, counsel for the claimant referred me to the case of Zucker v Astrid Jewels Limited 1978 WL 57245. Neither party had found any other authority on these points although Ms Abas also referred me to some first instance decisions.

24. The issues before the EAT in Zucker primarily related to the first instance tribunal's rejection of the claimant's substantive unfair dismissal claim. The appeal was successful and the EAT remitted the matter to be heard by a differently constituted tribunal.

25. The EAT then went on to consider the status of a continuation of contract order which had previously been made. It is not clear whether the matter was fully argued by the parties or whether there was a formal application to revoke or vary that order. What the EAT said on this issue is as follows:

A differently constituted Industrial Tribunal, sitting on 21st July 1977,made an award in favour of Miss Zucker under Section 79 of the Employment Protection Act 1975 ; and under that she was entitled to interim relief, to continue until the determination or settlement of her complaint. The matter is set out in para.5 of that Decision. Amongst other things, she was entitled to continue to be paid the basic sum of £32 gross, subject to other matters mentioned in the Decision. Unfortunately the hearing of the Industrial Tribunal, the appeal from which comes before us, was much delayed. As a general observation we would say it is very desirable, where there has been an order for interim relief, that the substantive hearing should take place as a matter of extreme urgency, within a matter of weeks rather than months. It is quite wrong that there should be a delay such as there was in this case. If the parties do not show any zeal in the matter, the Regional Office of Industrial Tribunals should itself take charge of it and ensure that the hearing is swiftly held.
The consequence is that nobody now knows quite what has happened about the order for interim relief. It somewhat appears, although no Order seems to have been made, that the Order lapsed at the date of the hearing by the Industrial Tribunal when they announced their Decision on 13th December 1977. We are told - it is not certain, but we are told - that it is thought that Miss Zucker has now obtained other employment. In those circumstances we think the correct Order to make is, that the Order for interim relief should continue from the 13th December until such date as Miss Zucker in fact obtained other employment, and should be revoked with effect from that date. If this hearing goes forward, and if she succeeds, then all these sums which she will have received will no doubt have to be brought into account in determining any compensation to which she may prove to be entitled.

26. In the first instance Scottish case of Mr A Fleming v Abbey Metal Limited Case No: 8000032/2023, Employment Judge McManus treated Zucker as authority for the proposition that the obtaining of alternative employment is a relevant material change in circumstances for the purpose of revoking a continuation of contract order.

Guidance

27. No one took me to any immigration statute or statutory instrument. I was provided with various Home Office guidance for sponsors but I was not addressed on the status of the guidance by either party. It was implicitly accepted by the claimant that the guidance reflected the immigration law position. Amongst other things, the guidance sets out in detail sponsors'

duties in respect of their sponsored workers and situations in which employing sponsored workers would not comply with immigration law.

Submissions

Respondents

28. The respondents argued that it would be unlawful for the Tribunal to make a continuation of contract order in these circumstances. The claimant's right to work in the UK was contingent on him having a sponsor and a certificate of sponsorship. The first respondent had ceased sponsoring the claimant on 8 November 2023 and had ceased to have a licence to sponsor any workers from 3 June 2024. Reinstatement or reengagement of the claimant would breach immigration rules. Granting a continuation of contract order would be in breach of immigration rules. Ms Omotosho also submitted that the claimant had always been employed to be provided to work for third parties and that a continuation of his contract would be a continuation of a contract which was intrinsically contrary to immigration rules.

29. In oral submissions, Ms Omotosho also said that I should not make a continuation of contract order because of the equitable principle that a claimant should come to equity with 'clean hands'. She said that the claimant had behaved fraudulently because on his own case he had paid £22,000 to an agent to obtain employment in the UK.

30. I asked Ms Omotosho why she said an equitable doctrine applied in the case of a remedy created by statute. She said that the continuation of contract order was akin to injective relief, that being an equitable remedy.

31. I was concerned at one point as to whether Ms Omotosho was also seeking to argue that the claimant was not likely to succeed in his unfair dismissal claim because his contract was void for / tainted by illegality. That would seem on its face to be attempting to reopen the threshold question which I had already determined. After exploring the issue with Ms Omotosho, it appeared she was not pursuing that argument and I do not consider it further.

32. As to the duration of any continuation of contract order, as to which I invited submissions, Ms Omotosho in essence said the Tribunal was bound by the grammatical interpretation of section 130; I could only make an order for a period up to the determination or settlement of the complaint and not for some shorter period. She had no instructions to make an application to vary or revoke a continuation of contract order under section 131 and said that my powers were only to make such an order where the material change in circumstances (here the revocation of the first respondent's licence) had occurred before rather than after the making of any continuation of contract order.

33. As to the pay component of any continuation of contract order, Ms Omotosho said that that should accord with the payslips provided.

Claimant

34. The claimant relied on Dowling and Langton for the proposition that the making of a contract continuation order would not engage any restrictions on the first respondent's ability to lawfully sponsor and employ migrant workers and no questions of legality arose. The purely statutory relationship created by a continuation of contract order was not a relationship regulated by immigration law. It is not a relationship of employment. The employer is obliged to pay the claimant but there are no reciprocal obligations on the claimant and in particular no obligation to perform work.

35. Ms Abas said that there was an analogy with Langton; there the impossibility of the former employer employing the claimant arose because the former employer no longer existed. Here the first respondent could not employ the claimant because it could not lawfully do so. There was nothing however to prevent it fulfilling the only obligation which would be imposed under a continuation of contract order, to pay the claimant.

36. Ms Abas had a submission expressed in the alternative in her written skeleton that the order could be made until 3 June 2024. She submitted that there was no mechanism in section 130 which would allow the Tribunal to reduce the period of the order to allow for events subsequent to dismissal but said that the first respondent could argue for a relevant change of circumstances under section 131.

Conclusions

Lawfulness of a continuation of contract order

37. It was common ground between the parties that the respondent could not legally employ migrant workers in the claimant's position once its sponsorship licence was revoked.

38. It is clear, however, from the limited authorities on the subject, that, despite the name, a continuation of contract order is not an employment contract and does not create an employment relationship. The respondents did not draw my attention to any legal provision which would render the relationship created by a continuation of contract order, that is a relationship by which the respondent is obliged to pay the claimant as if he were an employee but the claimant has no obligations to the respondent, unlawful.

39. I was concerned whether, nonetheless, the structure of section 129 means that it must be interpreted as excluding a case such as the claimant's from the ambit of a continuation of contract order. Section 129 requires the Tribunal to ask the respondent if it is willing to reinstate or reengage the claimant. The requirement to make a continuation of contract order flows from a refusal to reinstate or reengage or a claimant's reasonable refusal of an offer to reengage. I was concerned as to whether that requirement to make an order could be said to arise in circumstances where the employer could not lawfully reinstate or reengage however otherwise 'willing' that employer might be, or looked at another way, where the unwillingness was compelled by the fact that reinstatement / engagement would be unlawful.

40. Neither party addressed me in any detail as to whether the proper construction of section 129 is that the power to make a continuation of contract order is contingent on an employer being able to reinstate or reengage a claimant. Ms Abas relied on Langton, which appeared to be some authority for the proposition that there is not a requirement that an employer / respondent is able to reinstate or reengage a claimant. In Langton the dissolved trust would not have been able to employ the claimant. I was not addressed on whether the Secretary of State as substituted respondent would have been in a position to employ the claimant but at the very least it would appear that the Secretary of State was unlikely to have a requirement for healthcare workers of the claimant's type.

41. I concluded that Langton provides some support for the proposition that the ability of the ex employer to say 'yes' when asked whether it is willing to reinstate or reengage a claimant is not a pre-condition to the making of a continuation of contract order. In the absence of any argument by the respondents from first principles of statutory interpretation that there is no power to make a continuation of contract order in these circumstances, I concluded that there was such a power.

42. It did not seem to me that Ms Omotosho's arguments about the claimant not having clean hands had any relevance in circumstances where what is sought is a statutory remedy and the circumstances in which the remedy may be granted are as prescribed by statute. In any event, even if this argument had been open to Ms Omotosho, I would not have considered that I was in any position to reach conclusions that there was any wrongdoing by the claimant without much more detailed evidence and argument than I had.

43. I asked Ms Omotosho whether the first respondent was willing to reinstate or reengage the claimant. The answer was that it was not willing.

44. I gave the parties an opportunity to address me further on the appropriate period of the order after announcing that I was going to make a continuation

of contract order. Ms Omotosho maintained her position that the grammatical reading of section 130 did not give me power to shorten the period and that there was no power for me to vary or revoke the order on the basis of circumstances which arose before the order was made.

45. Ms Abas understandably took a careful position on this issue – clearly the claimant's interests were not served by the order being made for a shorter period but the parties also both had an interest in the order being made on the correct basis, so that there should be some finality to this part of the litigation.

46. I was troubled by the implications of a literal or grammatical reading of sections 130 and 131. The intention in interim relief cases is that the hearing will take place with expedition. In this case, unfortunately, that expectation has not been met. On their face, sections 130 and 131 do not appear to cater for a situation where there is a relevant change of circumstances which occurs before the making of the order for interim relief such as the claimant obtaining new employment, or, as in this case, the first respondent becoming unable to provide employment. I could not see any good policy reason for there not to be an ability to shorten the period for the order, particularly in cases such as this, where delay in making the order means that there has been a change of circumstances before the order is made.

47. It seemed to me that principles of interpretation such as the principle against absurdity / anomaly might lead to an interpretation which did not accord with the literal or grammatical construction. Neither party made any submissions based on general principles of interpretation.

48. Although the respondents did not argue for such a construction, it seemed to me that it would have been appropriate for to me to apply such an interpretation if it was reasonably plain to me that applying the literal approach would be an error of law.

49. I did not conclude that it was reasonably plain. One interpretive answer to the apparent absurdity or anomaly would be a construction of section 131 which allowed circumstances which occurred before the making of the order to be taken into account when considering variation. Alternatively it might be argued that the point at which any absurdity or anomaly should be addressed is in respect of section 130. Even if I had been satisfied that it would be an error of law not to interpret the sections as allowing for an order to be made for a more limited period in circumstances such as those before me, I had no application to revoke in front of me and no submissions as to which section should be read in a way contrary to its grammatical meaning in order to avoid any absurdity or anomaly.

50. In the circumstances, I concluded that I should apply the plain words of the statute

Sums

51. There was a dispute between the parties as to what sums the claimant could reasonably have expected to earn during the period. I had limited materials in front of me. I had the claimant's contract of employment which specified a yearly salary. I had an assertion by the respondents that there was a varied contract but no such contract. I had payslips which the claimant essentially said were fiction. I had no evidence from the respondents as to what those payslips reflected in terms of work done and payments made.

52. In those circumstances, it seemed to me that the most reliable evidence I had was the contract of employment. That contract reflected the position which would have been lawful in respect of the claimant's certificate of sponsorship, ie that the claimant worked for the first respondent rather than for third parties for whom the first respondent was acting as an agent. The position as asserted by the respondents was supported by no contractual documentation.

53. In terms of net sums, the claimant's representatives had calculated the amounts owing to the claimant after deduction of tax and National Insurance using a website called moneysavingexpert because the government tax calculator only applied to the current tax year. Ms Omotosho did not take issue with the calculations and I accepted them.

Employment Judge Joffe

Date: 10 September 2024

Sent to the parties on:

17 September 2024
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For the Tribunal Office:

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