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WORKER STATUS

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Autoclenz Ltd v Belcher and Ors

[2011] ICR 1157 SC

“So the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part. This may be described as a purposive approach to the problem. If so, I am content with that description.”

Uber BV v Aslam

[2018] EWCA Civ 2748

- Key Question – for whom (and under a contract with whom) do Uber drivers perform their services: Uber or the passengers?
- Contractual terms portrayed drivers as self-employed, contracting directly with passengers (Uber simply acting as intermediary).
- Majority endorsed ET’s application of Autoclenz and upheld decision that Uber drivers are ‘workers’

Underhill LJ dissenting

- Felt majority had extended Autoclenz principle beyond its proper bounds – nothing unrealistic about the agency relationship set out in the contractual documentation
- Common business model for taxi / minicab operators
- Not open to tribunal to rewrite parties' agreement

IWGB v Rooffoods Ltd (t/a Deliveroo) [2018]

IRLR 84

- Right to pursue application for statutory recognition contingent upon worker status
- Union applied to CAC to be recognised for collective bargaining by Deliveroo
- Deliveroo denied worker status
- CAC – no worker status as no personal service – genuine right to send a substitute and evidence of this in practice

Dewhurst v CitySprint UK Ltd (ET)

Substitution clause:

"The Contractor may at his own cost provide a substitute to perform any particular Job."

BUT

(1) subject to conditions

(2) internally contradictory – no real opportunity to arrange a substitute once job accepted

Addison Lee Ltd v Gascoigne

UKEAT/0289/17/LA

- Mutuality of obligation found once logged onto app
- Wording of contract – driver ‘deemed to be available and willing to provide services’ when logged on
- Immaterial that driver could log off at any time – says nothing about status when logged on
- Fact that driver could refuse a job may not oust mutuality
- Recruitment literature/website – ‘our dedicated fleet’ various factors illustrating not in business on own account

Leyland & Ors v Hermes Parcelnet Ltd Leeds

ET 22 June 2018

- Overall impression of contract seeking to negative worker status rather than reflecting true purpose
- Facts contradicted express terms negating mutuality
- Express substitution term was contradicted by evidence of 5 witnesses – Hermes operated a power of veto
- Factors why Hermes was not client or customer
 - (1) degree of dependence same as EE/ER
 - (2) no active marketing of services
 - (3) recruited as integral part of R's business

Pimlico Plumbers v Smith

[2018] UKSC 29

- Mutuality – obligation to be available for min 40 hrs a week
- Personal Service/Delegation
 - (1) Lord Wilson – limited or occasional power of delegation not inconsistent with personal service
 - (2) Importance of ‘dominant feature’ of contract – was it to provide personal performance?
 - (3) Terms qualifying substitution – had to be to another PP operative
 - (4) This “was the converse of a situation in which the other party is uninterested in the identity of the substitute, provided only that the work gets done” [para 32]

- an unfettered right to substitute another person to do the work or perform the services **X**
- a conditional right to substitute another person may or may not be inconsistent depending upon the conditionality **?**
- a right of substitution only when the contractor is unable to carry out the work **✓**
- a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure **X**
- a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent **✓**

Thank you

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