Can volunteers be workers? A summary of *Groom v Maritime and Coastguard Agency*

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Mr Martin Groom v Maritime and Coastguard Agency [2024] EAT 71

Introduction

1. The question of whether the position of a volunteer attracts employment rights has been litigated many times. In this case, the EAT found that the Claimant (a volunteer for the Coastal Rescue Service) was a 'limb (b) worker' in circumstances where he was entitled to remuneration for specific activities. However, the EAT left open the worker question for voluntary activities where remuneration was not payable.

2. The Claimant had been a volunteer for the Coastal Rescue Service since 1985. In May 2020, he was invited to a disciplinary hearing and his position with the Respondent was terminated with immediate effect. He appealed and this was rejected. He was issued with a P45 on 8 September 2020. The Claimant brought a claim in the ET, arguing that he had been entitled to be accompanied at the disciplinary hearing (a right under s10 Employment Relations Act 1999). This right is engaged if an individual is a worker under s13 of that Act (which has the same definition as s230(3)(b) Employment Rights Act 1996).

3. The question for the Tribunal was whether the Claimant, who was throughout referred to as a 'volunteer', was in fact a 'limb (b) worker'.

4. References to the judgment are in the form **[para no.]**.

A reminder of the 'limb (b) worker' test

5. In *Uber v Aslam and Ors* [2021] ICR 657, the Supreme Court confirmed that the statutory definition of a worker's contract has three elements:

   (a) A contract whereby an individual undertakes to perform work or services for the other party;

(b) An undertaking to do the work or perform the services personally;

(c) A requirement that the other party to the contract is not a client or customer of any profession or business undertaking carried on by the individual.

6. In this case, (b) and (c) above were not in dispute. The sole issue was (a), whether there was a contract to perform work or services.

Background and Tribunal's reasoning

7. The Claimant's relationship with the Respondent was governed by a 'Volunteer Handbook' and 'Code of Conduct'. On the one hand, these purported to be a clear voluntary arrangement with *'no mutuality of obligation'*. However, the documents referred to a *'two-way voluntary commitment'*, mandated volunteers to abide by the Code of Conduct (with a warning that failure to do so could lead to membership being cancelled), and provided for payment in some circumstances to compensate for the disruption caused by volunteering. When these payments were made the individual received a payslip, itemising hourly remuneration and expenses. P60s and P45s were also provided **[9-22]**.

8. The Tribunal concluded that the relationship was *'genuinely voluntary'* and found the Claimant was not a worker **[28]**. It relied, among other things, on the fact that there was no "automatic" remuneration for any activity, that many volunteers never claim and that there was no significant degree of control by the Respondent **[24]**. It relied on the reasoning in ***South East Sheffield Citizens Advice Bureau v Grayson*** **[2004] IRLR 35**, that, absent an umbrella contract, there was no contract between the parties in relation to attendance at a particular activity **[26]**. It concluded that if the parties started the relationship genuinely believing it to be voluntary then this was powerful evidence this is what it was, and there was no evidence that the relationship had changed **[27]**.

9. The Claimant appealed. The focus of the appeal was whether there was a contract between the parties and whether the Tribunal had been correct to rely on ***Grayson*** in the way it had.

10. Given the way the case was argued, the focus was on whether the Claimant was a worker each time he took on an activity with the Respondent (in other words, was he a worker when he was at work). Whether there was an 'umbrella contract' was not considered **[35-39]**.

EAT decision

11. The EAT rejected the Respondent's argument that the volunteer relationship is unique ('sui generis') and that volunteers can never be workers. The label 'volunteer' is not a term of art. It was noted that, in most of the cases involving volunteers, the courts have found there to be no contract. However, this was not because they were volunteers per se, but because on a close analysis of the actual relationship, there was found to be no contract. The fact that the parties describe the relationship as voluntary is a feature, but not a conclusive one **[75-82]**.

12. Key to the EAT's reasoning was the payment of remuneration. It departed from the Tribunal's reasoning that because remuneration was not automatically paid pointed away from there being a contract. The fact that remuneration had to be claimed (rather than automatically paid) was simply an administrative requirement **[91]**. Furthermore, it was immaterial that in practice many volunteers did not claim; what mattered was that the right existed **[92]**. It was also relevant that remuneration was payable for most of the activities undertaken **[93]**. The EAT rejected the Respondent's argument that a sum payable for attendance at activities should be characterised as expenses, rather than remuneration, noting that *"A payment in compensation for interference in a person's use of their time is the essence of remuneration"* **[94, 109]**. The Respondent also advanced an argument that there was no contractual obligation to make a payment as consideration for volunteering, instead it was because those activities were done that there was the opportunity to make a claim (the 'Collateral Contract Argument'). This was also rejected by the EAT on the basis that this distinction was artificial. The volunteers attend particular activities knowing they are entitled to remuneration **[95-98]**. Overall, the EAT held that the Tribunal failed to appreciate that the right to remuneration was an important factor that pointed in favour of the existence of a contract **[105]**.

13. The EAT held that *'the only proper construction of the documents is that a contract comes into existence when a [volunteer] attends an activity in respect of which there is a right to remuneration'*, and that this was a contract for the provision of services **[110]**.

14. Finally, the EAT noted that the Respondent's Code of Conduct states *"There is no minimum response commitment by our volunteers and they are not paid."* This was wrong in two respects: (i) the Code of Conduct did specify a minimum level or commitment and (ii) volunteers were entitled to be remunerated for many activities **[112]**.

15. Ultimately, the EAT concluded that *"the Tribunal erred in failing to find that a contract for the provision of services arose between the Claimant and the Respondent when he*

attended an activity in respect of which he was entitled to remuneration" (emphasis added) **[120]**. To that extent, it substituted its conclusion for that of the Tribunal and made a finding that the Claimant was a worker. However, it did not reach a conclusion in relation to activities where no remuneration was payable. This was left open for parties to argue at the Tribunal.

Comment

16. The idea that a volunteer attracts workers' rights will be alarming for some and exciting for others. However, conclusions should not be jumped to too quickly. The focus of this case was activities for which remuneration was payable, which will not be the case for many voluntary pursuits. The key takeaway is that 'volunteer' is not a term of art (or law), and that each relationship will have to be considered on its own facts.

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