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Worker Status Sent Spinning
Case summary of *Varnish v British Cycling*

By Naomi Webber
3PB Barristers

Background

1. Ms Varnish (the Claimant) is a talented cyclist. She holds world records for track cycling and has won medals at the European Championships, World Cup and Commonwealth Games. She entered into an 'Athlete Agreements' with British Cycling (the Respondent). This agreement expressly stated that it was not a contract of employment, that the Respondent would develop an Individual Rider Plan and provide the Claimant with support required, and that the Claimant would, among other things, train to the best of her abilities. The agreement provided for suspension and termination by the Respondent in certain circumstances.

2. The Claimant's agreement was terminated for performance-related reasons. She brought claims for unfair dismissal and discrimination. A preliminary issue was whether her relationship with British Cycling was as an employee, worker or neither within the meaning of s230 Employment Rights Act 1996 ("ERA") and s83(2)(a) Equality Act 2010 ("EqA").

Employment Tribunal decision (EJ Ross)

3. The Tribunal identified the "irreducible minimum" for a contract of employment pursuant to s230(1) ERA as mutuality of obligation, control and personal performance. It also looked at other factors pointing towards and away from an employment relationship.

4. Factors against there being an employment relationship were:

   (a) **Mutuality of obligation:** There was no 'wage/work bargain'. The Tribunal found that the Claimant did not work in exchange for a wage, and the Respondent did not provide work for the Claimant to do or pay her: funding was from a third party, the Claimant had to submit an application for funding, the award was means tested and the funding was a grant based on assessment of likely future potential, not on the basis of work

done in the past. Furthermore, the Respondent was not providing work for the Claimant; it selected her for the programme, and she agreed to train in accordance with her Individual Rider Plan. This demonstrated that the Claimant was not providing work or skill for the Respondent, in consideration for wages or remuneration.

(b) **Personal performance:** While the Claimant undertook personally to train hard (and did so), she did not undertake personally to do work provided by the Respondent.

(c) **Other remuneration/benefits:** The Tribunal rejected the Claimant's argument that services provided by the Respondent were 'remuneration'. It held that 'training, competition and personal development planning and review' and 'coaching support' were genuinely services and the Claimant did not have to accept the coaching support if she preferred to use her own personal coach.

5. Factors in favour were:

(a) The Claimant was subject to the Respondent's control under the Athlete Agreement. However, the lack of mutuality of obligation and personal performance meant there was no contract of employment.

(b) There were some other features consistent with employment status: she was integrated into the Respondent's organisation and there were restrictions and obligations around her media presence.

6. However, stepping back and looking at the whole picture, it was inconsistent with a relationship of employment.

7. In relation to whether the Claimant was a 'limb (b) worker' within the meaning of s230(b) ERA, as with the employee analysis, the Tribunal found that the Claimant was not performing work personally for the Respondent, but instead her position was more akin to a student or trainee (relying on *Daley v Allied Suppliers* [1983] ICR 90). Furthermore, while she was entitled to a number of benefits under the Athlete Agreement, they could not be considered wages pursuant to ERA. This was not the type of relationship the ERA was intended to govern.

8. The Tribunal also dismissed an argument that the Claimant was employed by or a worker of UK Sport (a second respondent in the ET) or of both the Respondent and UK Sport under a tri-partite arrangement.

Employment Appeal Tribunal decision (Choudhury J)

9. The Claimant appealed on three grounds:

    (a) The Tribunal erred in law in finding that there was no "mutuality of obligation" between the Claimant and the Respondent;

    (b) The Tribunal erred in concluding that the Claimant was not a worker;

    (c) The Tribunal's reasoning was irrational in relation to certain findings of fact.

10. The EAT rejected all the grounds of appeal.

11. In relation to mutuality of obligation, the EAT held that the Tribunal had not erred in law in finding that the Claimant did not do 'work' for the Respondent (although noted that this did not mean that the training done by a cyclist could not be found to amount to work in another case). Furthermore, it agreed that the benefits provided to the Claimant were not remuneration, but to enable her to train and compete at the highest level.

12. The EAT held that the Tribunal had not erred in finding that the Claimant was not a 'limb (b) worker' for substantially the same reasons. What she was doing was not 'work' and therefore she was not contracted to do so.

13. Finally, the EAT held that that Tribunal's conclusions were not irrational when looking at the picture as a whole.

Comment

14. The position elite sportsmen and women vis-à-vis organisations that support and promote them is somewhat unique. The EAT rejected the analogy of the Claimant being like a football player on the one hand (who have previously been found to work under a contract of service, Walker v Crystal Palace Football Club Ltd [1910] 1 KN 87, CA) and a university student on the other. However, it was keen to emphasise that this did not preclude another elite cyclist, training under a different agreement, being found to be an employee or worker under the ERA or EqA. Therefore, this is yet another reminder that worker status decisions are very much determined on a case by case basis. In the sporting context, questions such as whether training amounts to 'work' or benefits provided are 'wages' will be acutely fact specific.

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3 August 2020

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Naomi Webber

Barrister
3PB

0330 332 2633
naomi.webber@3pb.co.uk

3pb.co.uk