# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms T OWEN**

**Respondent:** **WILLOW TOWER OPCO 1 LTD**

# PRELIMINARY HEARING

**Heard at:** **Manchester (via CVP)** **On: 12 May 2023**

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

**Representation**
Claimant: Mr R Jones (counsel).
Respondent: Mr P Chadwick (consultant).

# RESERVED JUDGMENT

1. The Claimant did not have sufficient continuity of service, within the meaning of section 108 Employment Rights Act 1996, to bring a claim for unfair dismissal and so her claim for unfair dismissal under section 98(4) Employment Rights Act is dismissed.

2. The Claimant's belief in veganism did not amount to a protected characteristic within the meaning of section 10 Equality Act 2010 and so her claims under the Equality Act are dismissed.

# REASONS

**Introduction.**

1. The claimant brought proceedings against the respondent on 20 December 2021 claiming unfair dismissal and religion or belief discrimination. She initially included claims for notice pay and holiday pay, but those were not pursued and were dismissed upon withdrawal by EJ Holmes at the preliminary hearing on 10 January 2023.

2. The matter was listed for a preliminary hearing to determine continuity of service and the nature of the claimant's religion or belief, along with any other matters suitable for preliminary determination.
3. For the purposes of this hearing I was provided with a 121 page bundle, which I have read. I heard oral evidence from the claimant and Miss Holland on behalf of the respondent. Mr Jones prepared a written skeleton on behalf of the claimant and both he and Mr Chadwick made oral submissions.

4. It was agreed by the advocates that written reasons were likely to be required and/or helpful in this case and so I reserved my decision to provide for my written reasons.

**Issues for the Tribunal to decide.**

5. The parties agreed the following issues required determination at this preliminary hearing: (1) whether the claimant holds a philosophical belief within the meaning of section 10 Equality Act 2010 (EqA) (2) whether the claimant has sufficient continuity of service within section 108 Employment Rights Act 1996 (ERA) to bring her unfair dismissal claim under section 98 ERA (3) in respect of her claims, both under the EqA and ERA, if they are in time and if not whether time ought to be extended.
6.

**Findings of Fact**

**7.** The claimant was first employed by the respondent from 9 February 2016, although her offer of employment was made on 21 December 2015 it was agreed she did not commence her employment until February [53].

**8.** On 26 October 2017 the claimant wrote to the respondent after a telephone conversation with Miss Holland requesting to '*relinquish my contracted hours as of [26 October] and give 4 weeks' notice for this to be put into place. I do not want to give up my employment with Sunrise and would therefore request that I be placed on the 'bank' where I can cover as many shifts that are available*. [57]

**9.** This change took place on the 22 November 2017 when the claimant was transferred from contracted hours to bank work [58]. It is agreed that the claimant was not provided with an amended statement of terms and conditions, although an example bank agreement is provided in the bundle.

**10.** Once she was 'bank' she opted to do various shift patterns including days, earlies, afternoons and twilight (see the claimant's statement paragraph 2). The change from contracted hours to bank was beneficial to the claimant because she was in control of which days she did or did not work (see [57]) and also because she also worked for herself as a Foot Health Practitioner, often providing services to the respondent.

**11.** The claimant accepted in evidence that from 22 November 2017 there was no obligation on the respondent to provide the claimant with any shifts; nor was she under any obligation to accept the shifts offered. In

her evidence she said she did not know what being 'bank' meant but *"I was just told I could pick and choose what hours I did if I was on bank. They would give me the hours and I could say whether I wanted them or not…there was no responsibility on the respondent to offer me the hours and there was no responsibility on me to take the hours. When I was not working there was no obligation to be available to them*".

**12.** The system seems to have operated successfully until the pandemic. In 2020 the claimant worked a significant number of shifts during the initial lock down: 104 days between March 2020 and July 2020.

**13.** From 11 May 2021 to 10 November 2021 the claimant worked irregular days. For example between Saturday 29 May 2021 and 6 June she did not work at all. From 7 June 2021 to 17 June she did not take any shifts. She worked odd days on 26, 29 and 31 July then did not work until 10 August and her final shift was 12 August 2021. It is accepted by the claimant she did not work as bank staff paid for by the respondent beyond that date. Any work she did do was in her alternative role providing foot healthcare and was paid for by the resident's families.

**14.** By June 2021 the respondent decided, following concerns raised by family members of residents, that all staff and contractors in the building have had the vaccination [59]. At that time the legislation requiring vaccines for those who worked in care homes had not come into effect.

**15.** On 9 August 2021 the claimant raised her first grievance concerning the following: "1. *The feeling of harassment and victimization in the workplace. 2. The recent experience of detriment and discrimination surrounding my working hours. 3. Unilateral change of contract*" [60]. She did not, in her letter setting out her grievance, mention ethical veganism.

**16.** On 16 August 2021 the respondent wrote to the claimant informing her of a temporary change to her duties. This set out that from 11 November 2021 all employees including bank staff have to be vaccinated by law. Up to that date, those staff who have not been vaccinated were to be temporarily re-deployed. In respect of the claimant they "*would like to continue offering you work however that would have to be on a re-deployed basis, likely to the kitchen or laundry department*".

**17.** A grievance hearing took place on 18 August 2021. The claimant was accompanied by a union representative. At this hearing she "*explained she is following a vegan diet*" [63] and "*as she is following a vegan diet she believes she will be exempt from vaccine*" [65] and "*I am a vegan person and refused to have a vaccination that contains animal products"* [71]. The claimant also raised concerns relating to the efficacy of the vaccine and any potential side effects that might occur, but were at that time unknown.

**18.** The claimant was referred to occupational health to see if there was any reason why she could not have the vaccine for medical reasons given she was following a vegan diet. There was no evidence before me that the claimant was medically exempt from the vaccine.

**19.** On 31 August 2021 the claimant submitted a written request for a formal grievance meeting setting out five grounds of her grievance [75]. I do not need to set those out, other than to say that none of them referred to be veganism. This grievance was not given a second hearing by the respondent, but considered on paper as part of the earlier grievance.

**20.** From 4 September 2021 the claimant was not allowed into the building [82].

**21.** On 6 September 2021 the occupation health report was completed which confirms there is no health condition preventing the claimant from taking the vaccine "*she informs me that she does not have any health condition that prohibits her from taking the covid vaccine, but states she is anxious about taking the vaccine at present since the vaccines are still under clinical trials*" [84].

**22.** On 22 September 2021 a meeting took place to discuss the claimant's vaccination status. She produced an exemption certificate prepared by her union.

**23.** The grievance outcome was confirmed to the claimant in writing on 27 September 2021 which was not upheld. It noted the claimant "*said you followed a vegan diet and felt this would make you exempt from having the vaccine*". In respect of any detriment regarding working hours the outcome was "*as you are a bank employee you do not have set contracted hours and you are requested to work when there is availability*".

**24.** On 14 October 2021 the claimant was invited to a vaccination review meeting. That took place on 27 October 2021 the notes make no reference to the claimant's veganism [99-102].

**25.** On 11 November 2022 vaccination as a condition of deployment in CQC registered homes came into effect under the Health and Social Care Act 2008 (Regulated Activities)(Amendment/Coronavirus) Regulations 2021.

**26.** On 12 November 2021 the claimant was sent a letter headed Termination of Employment which confirmed that in the absence of an exemption the respondent could no longer continue to employ the claimant in her current role, no notice was given.

**27.** The claimant had some advice from her union representative in August 2021 and she had seen a solicitor sometime in September. She was aware that there were matters she felt were discriminatory in August, but she wanted to resolve them internally. It was not until she received the letter of 12 November 2021 that she felt she had to issue a claim and she did that within a month.

<u>Ethical Veganism</u>

**28.** The claimant was cross examined on her belief. She accepted that she did not mention veganism at all in her ET1. In her further and better particulars the claimant asserts she "*is an ethical vegan. The claimant*

*avers that this is a protected philosophical belief*" she goes on to state "*As all Coronavirus vaccines have been tested on animals, the claimant considers them to be inconsistent with her vegan beliefs"* [42].

**29.** Her statement prepared for the purpose of this hearing the claimant said the following:

*"I declined the vaccine on the grounds that I am a Vegan. There was no clarification as to whether or not the vaccination contained animal products or indeed had been originally tested on animals. I object to the consumption of animal products on ethical grounds. In practice, I follow a strict vegan diet nor do I use products that have been tested on animals, or products that contain animal contents." (para 8)*

*"I chose to decline on each occasion due to my ethical belief. On the 25th March 2021 Alison approached me and said "You are to book in for your vaccination next Wednesday" (31st March). I replied "No, as I have chosen not to on ethical grounds" I felt bullied as this was not the first time I had been approached*." (para 11).

**30.** The claimant was unable to say in evidence when she became a vegan, other than to say it was a long time ago. She gave limited evidence on how she practices her vegan lifestyle. She explained in evidence that to her "*vegan diet is the same thing about being a philosophical vegan*" that paragraph 8 and 9 in her statement is how she lives her life as a vegan (paragraph 9 of her statement relates to abortions).

**31.** She accepted that she may have to use products that are non-vegan at the respondent's care home, but that when she did so she would use gloves. She would take her own food into work. She said that she did not wear leather, but only when it was pointed out to her, and when she was asked about wool she shrugged. When she was asked why there is not more evidence to that effect (such as photographs of products or specific examples of behaviour) she referred back to her statement and paragraph 8 saying it is all set out there explaining that it is difficult for her to explain it because she has been doing it for so long. All in all she was not able to give much detail at all about her belief.

**Relevant Law**

**Employment status and casual contracts**

32. **Section 230 Employment Rights Act 1996** provides the statutory definitions of "employee" and "contract of employment" for unfair dismissal purposes. It is reproduced as follows:

***230 Employees, workers etc.***

*(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.*

33. In relation to casual staff like the Claimant, on the question of who meets the definition of *"employee"* there is no single legal test or exhaustive list of factors that are determinative, but the case of **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433** (HighCourt, Queen's Bench Division) remains the starting point. Whilst describing a contract of employment ("contract of service") and its parties ("master" and "servant") in the language of the period, McKenna J set out three key
considerations that have withstood the test of time:

> *"A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service."*

34. In **Montgomery v Johnson Underwood Ltd [2001] IRLR 269** the Court of Appeal explained the **Ready Mixed Concrete** test and emphasised the Employment Tribunal's first task:

> *23. Clearly as society and the nature and manner of carrying out employment continues to develop, so will the court's view of the nature and extent of 'mutual obligations' concerning the work in question and 'control' of the individual carrying it out. In the nature of things the lead in this process will be taken by employment tribunals and the EAT. They have been carefully set up and constituted to be well suited to the task. However, since the concept of the contract of employment remains central to so much legislation which sets out to adjust the rights of employers and workers, including employees, it must be desirable that a clear framework or principle is identified and kept in mind. It is inevitable that different tribunals will, from time to time, reach different conclusions on very similar facts. But unless the objectives of clarity and predictability in law are to be abandoned altogether, the principles upon which they base their decisions should be as clear as possible and adhered to. For my part, I regard the quoted passage from* **Ready Mixed Concrete** *as still the best guide and as containing the irreducible minimum by way of legal requirement for a contract of employment to exist. It permits tribunals appropriate latitude in considering the nature and extent of 'mutual obligations' in respect of the work in question and the 'control' an employer has over the individual. It does not permit those concepts to be dispensed with altogether. As several recent cases have illustrated, it directs tribunals to consider the whole picture to see whether a contract of employment emerges.* ***It is though important that 'mutual obligation' and 'control' to a sufficient extent are first identified before looking at the whole****."*

35. In the case of casual employees the determination of their employment status generally focuses on the first of the essential features of an employer-employee relationship as identified in **Ready Mixed Concrete**

and **Montgomery**: that of mutuality of obligation. The Claimant's case is one of those cases. The leading authority on mutuality of obligation in the context of casual workers remains **Carmichael v National Power plc [2000] IRLR 43** (House of Lords) which Mr Chadwick referred me to. In **Carmichael**, mutuality of obligation was described by Lord Irvine of Lairg, the then Lord Chancellor, as being the "irreducible minimum" quality which must be present for there to be an employment relationship (at [18]). The critical point of Carmichael is that if there is no mutuality of obligation, there can be no contract of employment at all.

36. Most of the authoritative cases concerning casual situations are heavily fact specific, but there are typically two ways in which casual staff may establish their status as that of employee. The first is where a global, or "umbrella", contract exists between the parties. The essence of an umbrella contract is whether there exists an obligation on the employer to provide work, and an obligation on the employee to perform any work which becomes available, and whether those mutual obligations continue during the times in between periods of work (**Stringfellow Restaurants Ltd v Quashie [2013] IRLR 99**, Court of Appeal).

37. Examples of cases where umbrella contracts have been in issue include: **Wilson v Boston Deep Sea Fisheries Ltd [1987] IRLR 232**, in which the Court of Appeal found there was no mutuality of obligation in the case of trawlermen engaged by the same hirer on a voyage-by-voyage basis;

    **O'Kelly & ors v Trusthouse Forte plc [1983] IRLR 369**, in which the Court of Appeal found there was no mutuality in the case of casual wine butlers who were engaged regularly and given a preferential treatment on the rota in comparison to other casual staff; and,

    **Clark v Oxfordshire Health Authority [1998] IRLR 125**, in which the Court of Appeal found there was no umbrella contract in the case of a bank nurse who regularly undertook work but in respect of whom there was no mutuality of obligation in between her individual assignments.

    **St Ives Plymouth Ltd v Hegarty UKEAT/0107/08/MAA** to which Mr Jones referred. In that case Elias P, as he then was, said the following: "*the only issue is whether the tribunal in this case was entitled to find that there was a proper basis for saying that the explanation for the conduct was the existence of a legal obligation and not simply goodwill and mutual benefit. The majority consider that it is important to note that the test is not whether it is necessary to imply an umbrella contract, or whether business efficacy leads to that conclusion. It is simply whether there is a sufficient factual substratum to support a finding that such a legal obligation has arisen. It is a question of fact, not law*".

38. The second avenue through which casual workers may establish employee status is where there is no umbrella contract but sufficient mutuality exists within each individual engagement. An example of this is to be found in the case of **Cornwall County Council v Prater [2006] IRLR 362**, where the Court of Appeal found there was sufficient mutuality in a situation where a children's home tutor would accept assignments that would last for several months or even years, during

which time there was an understanding between her and the Council that she would complete those assignments. That understanding amounted to sufficient mutuality of obligation and, for the periods of her assignments, the individual enjoyed the status of employee.

**Continuity of service**

39. Continuity of service is a statutory concept: it is not something the parties can agree upon (**Collison v BBC [1998] IRLR 238**, EAT). The period of continuity begins when the employee starts work (**s.211(1)(a) Employment Rights Act 1996**), which is the date where the employee begins work under the contract of employment (**General of the Salvation Army v Dewsbury [1984] IRLR 222**, EAT). That date is a question of fact for the Tribunal, but as Langstaff P (as he then was) emphasised in **Koenig v The Mind Gym UKEAT/0201/12** (8 March 2013, unreported), it is work *under the contract of employment* that is essential; work being done for the employer is not enough. The rule in **Koenig** was recently reaffirmed in **O'Sullivan v DSM Demolition Ltd [2020] IRLR 840,** where the EAT determined that the key distinction is between work done under the contract relied upon and work not done under that contract.

40. A period of continuity is presumed to last unbroken from start to finish, unless the contrary be shown (**s.210(5)**). The burden is on the employer to show the contrary. However, a period of one week not *"governed by a contract of employment"* (**ss.210(4)** and **212(1)**) will serve to break continuity unless an exception applies. Those exceptions rarely arise in practice and they are weeks where the employee is sick or injured (**s.212(3)(a)**, absent because of a temporary cessation of work (**s.212(3)(b)**, or absent but in circumstances where, by arrangement or custom, the employee is regarded as continuing in the employment (**s.212(3)(c)**).

**Philosophical Belief**

41. Religion or belief is a protected characteristic defined by **section 10 Equality Act 2010** as follows:

    (1)Religion means any religion and a reference to religion includes a reference to a lack of religion.

    (2)Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

    (3)In relation to the protected characteristic of religion or belief—

    (a)a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

    (b)a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

42. In determining whether a belief amounts to a philosophical belief the leading case remains **Grainger plc & ors v Nicholson 2010 ICR 360 EAT** which provides the now well established guidance (subsequently replicated by the EHRC's code of practice that a belief only qualifies for protection if it:

    a. is genuinely held;

b. is not simply an opinion or view point based on the present state of information available.
c. Concerns a weighty and substantial aspect of human life and behaviour
d. Attains a certain level of cogency, seriousness, cohesion and importance
e. Is worthy or respect in a democratic society.

43. In regards to ethical veganism I have been referred to the first instance decision of **Casamitjana Costa v The League Against Cruel Sports 3331129/2018 (Costa)** in which EJ Postle found, applying the Grainger test, that ethical veganism is a philosophical belief which qualifies as a protected belief within the meaning of section 10 EqA. The decision helpfully addresses the philosophy of ethical veganism:

*"Ethical veganism is not just about choices of diet, but about choices relating to what a person wears, what personal care products he or she uses, their hobbies and the jobs he or she does. They are in fact people who have chosen to live, as far as possible, without the use of animal products*

*The definition contained or provided by the Vegan Society is helpful in that it defines vegans as follows:*

> *"A philosophy and way of life which seeks to exclude, as far as possible and practical, all forms of exploitation and cruelty to animals for food, clothing or any other purpose and by extension promotes the development and use of animal free alternatives for the benefit of humans / animals and the environment, in dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals."*

44. It was accepted by the respondent, and by the tribunal, that ethical veganism in principle could amount to a philosophical belief. However, the tribunal still needs to be satisfied that the Grainger guidance is met in this claim. That is: does *this* claimant genuinely hold a belief in ethical veganism i.e. has she evidenced that she genuinely follows that belief, or, is it a view point as opposed to a belief.

**The parties' submissions**

**The claimant**

45. Mr Jones invites me to accept that the claimant is telling the truth about her belief in ethical veganism, having given a sworn statement, and evidence before the tribunal. It should be sufficient that she says she does. Whether or not she told her colleagues at the time the nature and extent of her belief is irrelevant. It is a question of fact for me to determine on the basis of the evidence I have before me whether she genuinely holds it; whether she is a good or observant vegan ought not trouble the tribunal too much.

46. In respect of the employment status Mr Jones submits the letter in which the claimant relinquishes her contracted hours also makes plain she wished to remain an employee. The failure to provide her with an updated bank agreement means that the parties revert to the original

terms of employment in which case she was employed throughout until her dismissal on the 12 November 2021.

47. If that is wrong and she was dismissed by virtue of her last assignment on 12 August 2021 then it was not reasonably practicable to bring the claim earlier because she had not received notification of the termination until November. In respect of her EqA claim these are ongoing acts, concluding in November so there is no limitation issue arising, but if there is it would be just and equitable to extend because she was going through an internal grievance and was unaware her role had been terminated until 12 November.

**The respondent**

48. Mr Chadwick submits in respect of the philosophical belief the claimant's evidence was woeful. It is not sufficient to simply be told she has it, there has to be some evidence to support that. In Costa there was little doubt about the way the claimant's life was lived in accordance with his belief, detailed and extensive evidence was available to the tribunal. We have none of that here.

49. With regards to continuity of service it was submitted that the claimant's employment status changed to casual/bank worker on 22 November 2017. From that date there was no mutuality of obligation as accepted by the claimant. There were sufficient gaps in her employment and so she does not have continuity of service or sufficient service to bring an unfair dismissal claim.

50. On that same analysis the last time she was employed was 12 August 2021 and so her claim is out of time in any event, and on the claimant's evidence there was no reason to stop her bringing a claim earlier. In other words it was reasonably practicable to bring a claim much earlier than she did.

**Discussion and Conclusions**

**Philosophical Belief**

51. I have not been provided with any evidence as to the philosophy other than being referred to **Costa**. I accept the description in **Costa** of the philosophy and how it impacts upon an individual who follows that belief, indeed it was the claimant in her further and better particulars who relied on that case as authority (albeit first instance) that ethical veganism is a protected characteristic. The question for me however, is whether Ms Owen, on the evidence she has produced, has satisfied me that she holds the belief to the extent required within the Grainger guidelines. It is not enough, in my judgment, for her to say she is an ethical vegan. She needs to demonstrate that she genuinely holds that belief.

52. I agree with Mr Chadwick that there was a paucity of evidence upon which I could conclude she genuinely holds a belief in ethical veganism. I accept she follows a vegan diet, and she avoids using some products that are not vegan. However, I cannot conclude that she genuinely holds a belief in *ethical veganism* for the following reasons:

a. She was unable to tell me when she started having a belief in ethical veganism.
b. She repeatedly said that she follows a vegan diet and to her that is the same thing as ethical veganism.
c. She was unable, or failed to, say anything about how her life is modified/structured to follow her belief other than her diet and some products (and she had produced no evidence in respect of the products).
d. She accepted that she did use products in the respondent's employment that were not vegan, but that she would use gloves. This seems to me to be inconsistent with the extent of the belief as described in **Costa**.
e. She gave no examples of ways in which her daily life is structured to adhere to her belief. She gave me no examples of travel, clothing, holidays whether she ate honey or figs, relationships for example. It was only when it was pointed out to her that she said she did not wear leather, but she did not expand on that and shrugged when she was asked about wool.
f. It was remarkable that so little of the documentation she had created for her grievances and subsequently for this tribunal referred to her ethical veganism or described what that was.
g. The most significant reference to veganism was to her diet, which does not go far enough to establish a belief in ethical veganism (see Costa). She did not explain how she went about ensuring she was following a vegan diet, how she checked her products, what she did if she was around someone else who did not eat vegan food, for example.
h. Her main criticisms of the vaccine appeared not to be connected to veganism, but that it is experimental and may contravene health and safety legislation. This is inconsistent with ethical veganism being a belief; if it was a genuinely held belief I would have expected that to exercise her more than it apparently did in the evidence I have seen.

53. The claimant appeared to simply say she was a vegan and that her statement paragraph 8 explained how she followed such a belief. In the absence of anything more from the claimant I cannot find that she genuinely holds a belief in ethical veganism. Therefore she has not established she has a protected characteristic within the meaning of section 10 EqA. The logical conclusion of that finding is her claim under the EqA must be dismissed.

**Employment Status/continuity of employment**

54. The claimant was an employee contracted to undertake 30 hours of work per week between February 2016 and November 2017. During that time there was mutuality of obligation; the claimant undertook 30 hours of work for which she was remunerated by the respondent.

55. It is an agreed fact there was a variation in November 2017 when the claimant asked to be bank staff. Mr Jones' submitted that in the absence of an amended contract her previous one applies and so she remained an employee. That cannot be right; if it was correct she would have been obliged to work 30 hours a week and the respondent would have been obliged to offer it to her.

56. I have to look at the facts and the evidence as to the parties' intention. From the point at which she became bank staff the claimant's own evidence was there was no obligation on either side. She agreed the respondent was not obliged to offer her work between shifts/assignments. She agreed that she was not obliged to take any shifts that were offered: "*When I was not working there was no obligation to be available to them*".

57. In light of the claimant's evidence that there was no mutual obligation there is not a sufficient factual substratum to support a finding that a legal obligation has arisen between the claimant and respondent in between shifts/assignments. The irreducible minimum is absent and there is not an umbrella contract after the 22 November 2021.Nor does her work providing foot health care continue the employment, given that was not undertaken under the contract of employment.

58. I have considered the impact of the letter terminating the claimant's employment and the contact between the parties in respect of the grievances. However, the termination letter is without notice, and so is not evidence of an agreement that there was a continuing employment relationship. Bank staff have their appointments terminated without notice and all staff – agency, bank or employees – had to be asked about their vaccine status. Neither of these things affect the lack of mutuality of obligation, which in my judgment is a determinative factor.

59. It was accepted by the respondent that when the claimant was working for the respondent she was an employee given the nature of the role and the extent of control over any bank worker when they were on shift. The issue is whether, in the absence of an umbrella contract, or other agreement, the claimant has sufficient continuity of service to bring an unfair dismissal claim. I cannot see on the basis of the evidence I have heard there was any ongoing agreement or mutuality of obligation.

60. In light of my finding on the absence of an umbrella contract the claimant was employed only on the dates she attended work and any continuity is broken under section 210(4) ERA where there was a period of greater than one week. Those periods were on:
    a. 10 days between 7/6/21 and 17/6/21
    b. 8 days between 10/7/21 and 18/7/21
    c. 9 days between 31/7/21 and 10/8/21
    d. No work was undertaken after 12/8/21 and 12/11/21.

61. None of these gaps are to be treated as counting under section 212 ERA and so each break is a break in the continuity of employment. The effect of that is that she has not acquired the necessary continuity under section 108(1) ERA to bring a claim of unfair dismissal.

**Limitation**

62. In light of my findings above that (a) the claimant did not genuinely hold a belief in ethical veganism and (b) the claimant did not have continuity of service to bring an unfair dismissal claim I have not considered it necessary to go on and make findings as to limitation.

## Conclusion

63. Having reached the decision that the claimant has not shown she has a protected characteristic of ethical veganism her claims under EqA are dismissed.

64. The claimant does not have continuity of service to bring a claim for unfair dismissal and so that claim is dismissed.

65. Those claims were the remaining claims brought under case number 2400073/2022 and so this judgment brings that claim to an end. The hearing currently listed 17 to 19 January 2024 is hereby vacated along with any outstanding case management orders.

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**Employment Judge Mellor**

15 May 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

26 May 2023

FOR EMPLOYMENT TRIBUNALS