

CASE NOTES

EDITED BY RUTH ARLOW

Chancellor of the Dioceses of Norwich and Salisbury

Ms F Gabe v The United Reformed Church

Employment Tribunal: Employment Judge Segal QC, 24 November 2017
[2017] UKET 2204367/2012

*Ordinand in training – apprenticeship – Employment Rights Act 1996 –
Equality Act 2010*

Ms Gabe was accepted to train for the ministry of the United Reformed Church (URC) as a full-time student at Westminster College, Cambridge. She was given a grant and allowances amounting to some £11,000 a year. In September 2009, she started a supervised internship at Clapton Park URC, working rather more than 32 hours a week under local supervision and under the training auspices of Westminster College, where she had weekly contact sessions. Ultimately, however, she was not ordained, and she sued for breach of contract, disability, race and religion or belief discrimination and unfair dismissal.

Under section 230 of the Employment Rights Act 1996 an ‘employee’ is ‘an individual who has entered into or works under . . . a contract of employment’ and a ‘contract of employment’ is a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing’, while section 83(2) of the Equality Act 2010 defines ‘employment’ as ‘employment under a contract of employment, a contract of apprenticeship or a contract personally to do work’. A contract of apprenticeship differs from a contract of service; the latter has as its object the performance of work, whereas the primary purpose of the contract of apprenticeship is training and there is no need for the mutual obligations of work and pay that characterise a contract of service. Ms Gabe claimed that in order to demonstrate a contract of apprenticeship the following needed to be shown: some sort of contract; training for a learned profession; that the organisation in question undertook to train the apprentice; that the apprentice was bound to serve and comply with the instructions of the organisation through delegation or directly; and that the apprentice was moving towards a qualification that was the point of the training. She also argued that, though not a necessary condition, it was of assistance to her claim to be an apprentice that she was being paid.

Employment Judge Segal QC found that there was, in fact, a contract of apprenticeship. He also found, however, that Ms Gabe was not under a contract personally to perform work. She performed services for the respondent; but that was not the consideration in return for which she was paid the grant and allowances, or at least not the consideration in return for which she was primarily paid the grant and allowances. As with most apprentices, that was not the reason why the apprentice master or chambers/pupil supervisor or solicitor's firm or carpenter pays the apprentice. The benefits for the chambers or the firm or the carpenter are more generalised and more long-term. Ms Gabe did not, therefore, satisfy that part of the test in section 83(2) of the Equality Act 2010; however, Judge Segal held that she had been employed by the URC within the meaning of section 230(1) of the Employment Rights Act 1996 and had been in employment within the meaning of section 83(2) of the Equality Act 2010. [Frank Cranmer]

The note author is grateful to Ms Gabe for supplying a copy of the judgment.

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Re St Andrew's Cemetery, Jesmond

Newcastle Consistory Court: Duff Ch, 23 March 2018

[2018] ECC New 1

Exhumation – flooded crypt

The chancellor granted a faculty for the temporary exhumation of the cremated remains of the petitioner's father for their later re-interment in the same vault in St Andrew's Cemetery, Jesmond. On the day of the interment it had been discovered that there was water ingress into the vaulted chamber as a result of some fault in the construction or lining of the vault. The remains were to be treated in a seemly fashion and stored safely at the undertaker's premises until the construction of the vault was rectified, whereupon the remains would be returned to the vault. The petition arose not from a mistake being made or from any change of mind on the part of the family of the deceased but, on the contrary, from a desire to achieve what had always been intended in the creation of a family vault and the respectful interment of the caskets and remains of family members. Any refusal to grant a faculty would have resulted in the casket of the deceased remaining immersed in water and would have prevented the interment of any other family member within the vault. [RA]

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