Cambridge Law Journal, **84(1)**, March 2025, pp. 15–18 © The Author(s), 2025. Published by Cambridge University Press on behalf of The Faculty of Law, University of Cambridge.
doi:10.1017/S0008197325000170

THE Supreme Court's recent decision in *HMRC v Professional Game Match Officials Ltd.* [2024] UKSC 29 provides important guidance on determining the employment status of referees engaged on short-term or casual contracts. The Court clarified key principles regarding mutuality of obligation and control – two essential elements for establishing an employment relationship. While the judgment offers welcome clarity in some respects, it arguably fails to account fully for the unique context of sports officiating.

The facts of the case were as follows: Professional Game Match Officials Limited (PGMOL) is a not-for-profit company that provides referees for major football competitions in England. It engages two groups of referees: the Select Group, who are employed full-time, and the National Group, who officiate part-time alongside other employment. This case concerned the employment status of National Group referees for tax purposes in 2014–15 and 2015–16.

National Group referees were appointed annually and required to pass fitness tests. Match appointments were offered via software, typically on the Monday before a weekend game. Referees could refuse appointments without penalty and could withdraw before arriving at the ground on match day. PGMOL could also make changes after appointments were accepted. PGMOL operated disciplinary procedures for breaches of match day protocols. It could suspend or remove referees from its list, but only the Football Association could cancel a referee's Level 1 registration (at [14], [15]).

In circumstances where HMRC claimed that contracts of employment were created and hence match fees were subject to the PAYE scheme and that the referees were "employed earners" for National Insurance purposes, litigation ensued. The First Tier Tribunal (FTT) held that while there were both overarching seasonal contracts and individual match contracts between PGMOL and the referees, neither constituted employment contracts (at [18]). For the individual contracts, it found insufficient mutuality of obligation due to the parties' rights to cancel before the referee arrived at the ground and insufficient control by PGMOL over referees during matches (at [18]). The Upper Tribunal (UT) [2020] UKUT 147 upheld the FTT's decision on mutuality of obligation but found errors in its approach to control (at [19]). The Court of Appeal [2021] EWCA Civ 1370, [2022] 1 All ER 971 subsequently allowed HMRC's appeal on mutuality of obligation for individual contracts, but dismissed it regarding overarching contracts. It rejected PGMOL's arguments on control (at [21]).

Before the Supreme Court, two issues were examined regarding the individual match contracts, namely (1) whether there was sufficient mutuality of obligation to satisfy that element of an employment relationship; and (2) whether PGMOL exercised sufficient control over referees to satisfy that element of an employment relationship.

The Supreme Court began its assessment by reaffirming the three-part test for employment contracts set out by MacKenna J. in *Ready Mixed Concrete (South East) Ltd. v Minister of Pensions and National Insurance* [1968] 2 Q.B. 497, 515 ("*RMC*"):

> 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.

On the question of mutuality of obligations, the Court held that the individual match engagements satisfied this requirement (at [57]). It rejected PGMOL's argument that mutual obligations must exist for a period before work commences (at [56]). The Court affirmed that a contract of employment may exist covering only a short period – the period when work is performed (from the time early in the week that the referee accepted the offer of a match on the Saturday of that week to when they delivered their match report on the following Monday (at [56]), citing with approval *McMeechan v Secretary of State for Employment* [1997] I.C.R. 549 (at [51], [52]). The Court considered that its finding in this connection was not disturbed by the fact that both parties had the right to cancel without penalty before the referee's arrival at the match (at [56]).

Meanwhile, on the question of control, the Court held that the combination of contractual obligations imposed on referees regarding their conduct from match acceptance to report submission, including during matches, was capable of providing PGMOL with a "sufficient framework of control" for employment purposes (at [88]). Rejecting the FTT's emphasis on PGMOL's inability to intervene during matches, the Court stressed that an employer need not have the right to intervene in every aspect of an employee's duties (at [69]–[70]). It noted that in many skilled occupations, employers lack practical ability or legal right to intervene in certain tasks (at [70]). The Court found that PGMOL's power to impose sanctions after engagements ended (e.g. not offering future matches) was significant in exercising control over referees' performance (at [88]). It also held that the assessment and coaching systems in place were relevant to control (at [84], [85]).

In the final analysis, the Court dismissed PGMOL's appeal on both mutuality of obligation and control (at [89]). However, it remitted the case to the FTT to determine whether the individual match contracts were employment contracts, considering all relevant terms and surrounding circumstances of the case (at [92], [93]).

While providing welcome clarity on some aspects of the employment status of casual workers, the judgment can be criticised on several grounds. First, while the Court appeared to suggest that the referees' right to refuse work without being subject to sanctions should be considered at the third stage of the employment contract analysis (under MacKenna J.'s test in *RMC*), it did not address this matter substantively. It is arguable that the ability to refuse work without sanction distinguishes referees from the other skilled professionals mentioned in the judgment (e.g. masters of vessels, surgeons, research scientists and technology experts) who typically cannot refuse assigned work without consequences. This right of refusal is particularly significant in the context of part-time, casual work arrangements in the sports sector and thus deserved a more rigorous examination.

Second, the judgment fails adequately to consider the "specificity of sport" – a principle recognised in sports arbitration that acknowledges unique aspects of the sporting world. Indeed, the Court of Arbitration for Sport (CAS) has emphasised the importance of considering sport-specific contexts when evaluating legal issues (*Matuzalem* case, CAS 2008/A/1519). The "specificity of sport" principle would, for example, recognise that many referees intentionally maintain their services on an ad hoc basis to preserve independence and because they view officiating as a hobby secondary to primary employment. The Court's approach seems to deprioritise these peculiar characteristics of sports officiating. This may lead to unintended consequences in the broader sporting context, potentially affecting the willingness of individuals to take on part-time officiating roles if they are deemed to be employees, given the implications that such a status would now have for tax and national insurance purposes and the willingness of their primary employers to sign off on their officiating. Relatedly, the judgment does not sufficiently address the economic realities of the referees.

Third, while the Court examined mutuality and control in considerable detail, the judgment gave comparatively little weight to the extent of referees' integration into PGMOL's organisation – a factor highlighted as relevant in CAS cases like *Vladimir Sliskovic v Qingdao Zhongneng Football Club* (CAS 2015/A/4161 [at 92]: "Was the Appellant an integral part of the club, or was he merely a casual or accessory thereof?"). Greater analysis of integration could have provided a more holistic assessment of the true nature of the relationship between referees who formed part of the "National Group" as opposed to those who

formed part of the "Select Group". Indeed, the degree to which referees were incorporated into PGMOL's operations, as opposed to being merely accessory to these operations, could have shed important light on the nature of the relationship envisaged by the parties. The Court's near-exclusive focus on mutuality and control arguably betrayed its earlier warning that "mutuality of obligation and control were necessary, but not necessarily sufficient, conditions of a contract of employment" (at [30]).

In the final analysis, it is arguable that the Court's expansive interpretation of mutuality of obligation and control could have far-reaching implications for workers in the gig economy and other casual employment arrangements, particularly when viewed in the light of recent judgments in *Uber BV v Aslam* [2021] UKSC 5, [2021] I.C.R. 657 and *The Commissioners for Her Majesty's Revenue and Customs v Atholl House Productions Ltd.* [2022] EWCA Civ 501. By finding that employment relationships can exist even for very short-term engagements, the judgment may inadvertently cast a broad net, bringing a wide range of casual workers under the umbrella of employment law. This could lead to unintended consequences in sectors that rely on flexible work arrangements. More pointedly, there is a real risk that the judgment could discourage organisations from offering flexible, part-time roles for fear of creating contracts of service. This could be particularly problematic in the sports sector, where many roles are filled by enthusiasts who do not seek or expect full employment protections.

That said, in remitting the case, it is worth noting that the Supreme Court instructed the FTT to consider "all relevant terms of the contracts, in the light of all the surrounding circumstances" [at 92]. This guidance presents an opportunity for a more nuanced evaluation accounting for the unique aspects of sports officiating. However, the Court's strong findings on mutuality and control may ultimately constrain the FTT's ability to reach a different overall conclusion.

JASON HAYNES

Address for Correspondence: University of Birmingham, Law School, Edgbaston, Birmingham, B15 2TT, UK. Email: j.k.haynes@bham.ac.uk