



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P To

**Respondent:** Yumchaa Retail Limited

**Heard at:** London Central

**On:** 12 September 2018

**Before Judge:** Employment Judge A Isaacson

## Representation

**Claimant:** In person

**Respondent:** Not in attendance

# JUDGMENT

**The Judgment of the Tribunal is as follows:**

**The claimant's unauthorised deduction from wages claim succeeds. The respondent is ordered to pay to the claimant the gross sum of £900.00.**

# REASONS

1. The claimant presented a claim for outstanding wages for the month of March 2018. The respondent defended the claim on the basis that the claimant was not an employee but a self-employed contractor.
2. The claimant attended the Tribunal hearing today and gave evidence. He produced copies of email exchanges between the claimant and the respondent from 1 March 2018 to 9 April 2018. He also showed a copy of his bank statements from 1 March 2018 to 1 September 2018. The respondent did not attend the hearing.

### Findings of fact

3. The claimant applied to work for the respondent through an agency Accomplished Today. He attended an interview and then exchanged emails with Scott Priestnall, who is the CEO of the respondent company.
4. The email exchange confirms that the claimant would work on a rolling contract with one week's notice at a daily rate of £75. He was contracted to work a minimum of two days per week but would start with three days per week.
5. The email from the respondent does say that the claimant would be on a consultancy agreement and the claimant sent an invoice for £900 to the respondent on the 28 March 2018. The invoice was in his name.
6. The respondent argues that the Tribunal does not have jurisdiction to hear the claimant's case as he was self-employed and not a worker. However, the Tribunal finds that the claimant was a worker, despite what was said in the email exchange. The claimant was not working for anyone else at the time. He didn't have any form of company and only drew up an invoice so he could be paid his wages. He had to provide his personal service and could not substitute himself. He mainly worked in the respondent's premises on their computers.
7. The claimant gave in his notice on the 28 March 2018 and shortly after started a new job. He said there was a clash of personality between himself and some other members of staff.
8. The claimant sent his invoice for £900 on the 28 March 2018. He sent chaser emails to the respondent and eventually received an email confirming receipt of the invoice on the 4 April 2018 and an email on the 9 April stating that he would be paid what he was due but disputing the hours he worked: "*Reasons being your left at times during the day for hours on end, you turned up ridiculously late other days and some days not all. You spend three week creating a plan I told you should have done in 3-4 days and you actually auctioned very little.*"
9. It is clear from this email exchange that the respondent felt the claimant had not put in enough hours to justify his invoice. The respondent was not present at the hearing to provide further evidence. However, the email exchange regarding the claimant's contract states a daily rate and not an hourly rate and refers to 3 days a week. If the claimant was not turning up to work for the full days he should have been managed better or dismissed.
10. The claimant is entitled to be paid for the days he was a worker. According to his contract he was entitled to 3 days per week at a daily rate of £75. The claimant worked 3 weeks and gave one week's notice. He was told he wasn't required to work his notice. The Tribunal accepts this evidence.

**Conclusion**

11. The Tribunal finds that the claimant was a worker under a contract to work 3 days per week at a daily rate of £75. He was entitled to be paid for 4 weeks work, including notice, which amounts to £900.
12. The respondent is ordered to pay to the claimant the gross sum of £900.

Employment Judge Isaacson

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Date 12 September 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON  
13 Sep. 18

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FOR THE TRIBUNAL OFFICE