EMPLOYMENT TRIBUNALS

Claimant: Mr D Jones

Respondent: Ensign Building Projects Limited

Heard at: Liverpool **On:** 21 June 2018
23 July 2018
(in Chambers)

Before: Employment Judge Barker

REPRESENTATION:

Claimant: In person
Respondent: Mr S Flynn, counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was engaged as a worker by the respondent from January 2017 to November 2017 and consequently is entitled to recover holiday pay of £2520 for his period of engagement.

2. The Tribunal has no jurisdiction to determine any complaints that the claimant may have concerning tax and National Insurance which were paid or fell to be paid during his period of engagement with the respondent. Any such dispute must be referred to HM Revenue and Customs for adjudication.

3. The parties agreed in writing in advance to the terms of the van hire arrangement between them such that the respondent did not make unlawful deductions from the claimant's wages contrary to s13 of the Employment Rights Act 1996.

4. The Tribunal does not have sufficient evidence of hours worked by the claimant or payments made by the respondent to be able to determine the claimant's other claims for unpaid wages. The parties are required to comply with the case management orders set out at the conclusion of this document to enable the Tribunal to determine the claimant's remaining complaints.

REASONS

1. The claimant was in person before the Tribunal and was accompanied a friend. He gave evidence on his own account and called no further witnesses on his behalf. The respondent's director, Luke Cleary, gave evidence on the respondent's behalf. At the outset of the hearing, the Tribunal explained the process that the hearing would follow, including that the parties would have the opportunity to ask questions of the other side's witnesses. At this point, the claimant expressed his concern that he had not appreciated this and was not adequately prepared to take part in the hearing.

2. The Tribunal allowed the claimant a period of time during a break in the hearing to draw up a list of questions for the respondent's witnesses. After this period of time had elapsed, the claimant told the Tribunal that he was still not ready to proceed, although he did tell the Tribunal that he had drawn up some questions. It was suggested by the judge that she would ask questions of the respondent's witnesses first and in the event that this did not cover all the points that the claimant wished to address, he could ask further questions. The claimant agreed to proceed on that basis.

3. At the conclusion of the hearing, the claimant and the respondent were offered the opportunity to make closing statements. It was explained to the claimant that there was no obligation on him to do so, and if he chose to do so, the statement did not have to be lengthy or contain legal pleadings but was rather his opportunity to sum up the arguments he had made at the hearing and wished the Tribunal to consider in reaching a decision.

4. The claimant made further representations that he would not be able to do this in the time allotted to him on the day. He told the Tribunal that he believed that the respondents had taken advantage of him and had not provided him with their witness statements early enough for him to be able to deal with them. He said that he had prepared for the hearing on the basis of the contents of the respondent's statement of case and had not had time to consider the witness statements, which he alleged were only handed to him on the day of the hearing.

5. The respondent told the Tribunal that this was not correct and that the respondent's witness was supplied to the claimant by the respondent's solicitors in accordance with the Tribunal's case management order, which required simultaneous exchange of the parties' statements on 6 April 2018. Notwithstanding the terms of the order, they told the Tribunal that the claimant did not send his witness statement to them until 9 April 2018. He made no complaint at the time he supplied his witness statement that he had not received the respondent's witness statement.

6. The claimant also told the Tribunal that the respondent had deliberately withheld documents supplied by him from the agreed bundle. Again, this was denied by the respondent. The respondent told the Tribunal that the claimant did not disclose any documents to them before the hearing, either in accordance with the

orders for disclosure of documents or exchange of witness statements, save for a letter of 4 May 2018.

7. The parties were given further time at the conclusion of the hearing to submit written closing statements. The claimant was given 14 days to submit his and the respondents were given 14 days thereafter to respond. The parties were told that no new evidence would be permitted to be included with these closing statements, as they were an opportunity to provide a closing summary of each side's arguments and not a second opportunity to disclose documents, or introduce new substantive evidence.

The claimant's written submissions dated 2 July

8. Notwithstanding this instruction, the claimant's written submissions consisted of more than 8 pages of detailed rebuttals of the respondent's evidence, in particular of Luke Cleary's witness statement, covering issues that the claimant had the opportunity to ask Mr Cleary when he appeared at the hearing to give evidence, but did not. The claimant further told the Tribunal that

"I need to state that I honestly believe that this case should be reheard because I believe that I have been disadvantaged by evidence supplied by me to the Tribunal Service copied to the Respondents not being in the bundle or considered on the day of the hearing. … the fact that I cannot introduce new evidence and request witnesses to challenge some of the statements made by Luke Cleary which I believe to be untruths is truly disappointing and I believe that it may put my claim at a disadvantage."

9. The claimant again told the Tribunal that he supplied documents with a letter dated 4 May 2018 to the Tribunal and the respondents and that these were not included in the bundle. A reference at the foot of the letter suggesting that enclosures were supplied refers to "*Solicitor's letter dated 20 March 2018*" and "*tax determination status*", but it is evident from the Tribunal file, and reflected in the respondent's written submissions of 18 July, that no documents were supplied with the claimant's letter of 4 May 2018.

10. The only additional documents that claimant handed to the Tribunal during the hearing on 21 June were an email from two of the respondent's clients, "Irene and Michael", undated and a Gov.uk website print-out of an HMRC online tool to check employment status. The claimant had the opportunity to query the contents of the bundle at the hearing on 21 June but no further documents were handed up, including those the claimant says he sent on 4 May and now says are critical to his case. The final paragraph of the claimant's letter of 2 July states

> *"because certain documents which the Tribunal Service has received which were not place in the bundle and could not be considered on the day of the hearing it is my belief that my case could be disadvantaged."*

11. Should the claimant have wished this evidence to be considered by the Tribunal, he could have asked at the hearing for the Tribunal to consider it, as he did with the additional email and HMRC documents that he handed up. He had received an electronic copy of the bundle on 9 April and so had the opportunity to review the

bundle compiled by the respondent before the hearing on 21 June and to ask to be allowed to add to it, should he have wished to do so.

12. Furthermore, the parties were asked to attend on 21 June for 10am but due to the unavailability of the Tribunal, the hearing did not start until 12 noon. The claimant therefore had an additional two-hour period to consider the issues he now raises and to present them to the Tribunal during the hearing itself.

13. The claimant also says that he requested specific disclosure of "proof of earnings" information from the respondent for periods 28 November 2016 to 10 February 2017, but the letters from the claimant on the Tribunal file contain no such request. The claimant refers to wishing to see information relating to the respondent's staff and vehicle hire processes, and asks for a letter from the respondent's accountants to address how the respondent paid its staff and accounted to HMRC for tax and national insurance. No request was made for specific disclosure of "proof of earnings" documentation.

14. The respondent responded to the claimant's submissions of 2 July by producing correspondence from them to the claimant, which accords with correspondence on the Tribunal file, and shows that the respondent complied with the order for witness statements to be served by 6 April by sending to the claimant Luke Cleary's witness statement by email on 6 April. The respondent then sent to the claimant an electronic copy of the indexed and paginated bundle of documents on 9 April.

15. The claimant submits in his letter of 2 July that the respondent has "*exploited my lack of awareness of the Tribunals formal process for their own case*". There is no evidence that this is the case. The respondent's solicitor has produced correspondence between the parties that shows that they reminded the claimant of his obligations and the corresponding deadlines, and complied with all deadlines on time and provided the claimant with documents and statements in a timely and accessible manner. There is also no evidence that the respondent either deliberately or mistakenly omitted documents that the claimant asked to be included in the bundle. There has therefore been no prejudice to the claimant caused by the respondent's representative's behaviour in the conduct of the litigation.

The claimant's claims

16. The claimant claims holiday pay, unpaid wages of either £2304 or £2600, payment for "a week in hand", "reimbursement for vehicle charges" and "tax and NI contributions".

17. A preliminary issue that falls to be determined is whether the claimant can be said to be a worker or an employee, or was self-employed.

18. The Tribunal has no jurisdiction to determine the claimant's "tax and NI contributions" and any such dispute must be referred to HMRC for adjudication in the first instance.

19. The claimant will say that he was either a worker or an employee of the respondent. He will say that he worked from 28 November 2016 until 9 November 2017 as a site foreman and site representative for the respondent, and that because

he was an employee or worker he is owed £2,304 or £2,600 outstanding pay for unpaid wages; that he is owed a further week's wages for week commencing 4 September 2017 that the respondent says was worked as a week in hand; that he was charged to use the company van, which charges were deducted from his wages, and that he is entitled to statutory minimum annual leave in the sum of £3,000 gross.

20. The respondent will say that the claimant was at all times a self-employed contractor and that therefore the Tribunal has no jurisdiction to deal with any of his claims because he was not an employee within the meaning of section 230(1) of the Employment Rights Act 1996, or a worker within the meaning of section 230(3) of the Employment Rights Act 1996. They say that he is unable to bring a breach of contract claim because no employment contract has ever existed, and he has no right to claim in the Employment Tribunal for annual leave or alleged unauthorised deductions from wages.

21. The respondent will say that at all times the claimant was responsible for payment of his own income tax and national insurance contributions, that the respondent has never under any obligation to provide the claimant with work and that the claimant was free to accept or decline work offered to him and on occasion opted not to undertake work when it was made available to him.

22. The respondent will say that the claimant was always free to provide a substitute and in January 2017 he did so. The respondent will say that it was happy with this arrangement so long as the work was done. The respondent will say that independent contractors such as the claimant were not paid for work until it had been inspected by the respondent's staff.

23. The respondent will say that the claimant was able to work for others and did so and that he did not have fixed hours, receive overtime pay or holiday pay. The respondent will also say that the claimant was not dismissed but that he was simply not offered any further work.

24. The respondent will say that there was no mutuality of obligation between the parties, not a sufficient degree of control by the respondent over the claimant, and the claimant did not undertake to do or perform work personally for the respondent.

Findings of Fact

25. The claimant was first engaged by the respondent at the end of 2016 and was initially contacted by Mr Dan Cleary who was the project manager at the respondent. The claimant accepted that his initial offer of work was made on the same basis as that of his acquaintance, Tony Eaves, who recommended to the respondent in late November 2016 that the claimant's services be engaged and that both he and Mr Eaves were initially subcontractors.

26. The claimant says that his status as an independent contractor changed after his holiday in January 2017. The respondent told the Tribunal that he was re-engaged as a contractor by them after they contacted the claimant about his availability on 16 January 2017.

27. The claimant told the Tribunal that prior to January 2017 he worked on three different sites in a month but that after that, he was engaged on one continuous project as the respondent's site manager at one regular site. He told the Tribunal that he was told to collect workers on the way, was told what to do by Luke Cleary, a director of the respondent, and was the respondent's responsible person on that site. The Tribunal accepts the claimant's evidence in this regard, which was for the most part unchallenged by the respondent.

28. The claimant told the Tribunal that he wore the respondent's uniform. The respondent told the Tribunal that this was not compulsory, but the claimant's evidence, which is accepted, was that he did need to wear the respondent's uniform so that he was identifiable on site as the respondent's site manager. He was given a list of tasks to carry out by Mr Cleary and although he was not supervised on a continuous basis, his work was periodically inspected. The respondent accepted this.

29. Although the Tribunal accepts the respondent's evidence that in theory the claimant would have been able to supply a substitute to carry out his tasks, the claimant's evidence is accepted that this would not have been practical nor desirable given that the claimant had ongoing knowledge of the site and that the site foreman's role would have been difficult for a substitute to carry out in his absence. Although the respondent told the Tribunal that the claimant did send a substitute on one occasion, the claimant did not accept that this was the case.

30. The Tribunal accepts that, to carry out the particular task that the claimant was given, which was to "run the site", there was a need for continuity and therefore personal service was required from the claimant.

31. The claimant told the Tribunal that he was not allowed to advertise his own work. When asked by who had told him that he was not allowed to advertise his services, the claimant was unable to tell the Tribunal who had told him this. The claimant also accepted that he did do some work for another contractor, and both parties supplied an email which was undated from "Irene and Michael", customers of the respondent, who had some of the respondent's workers independently carry out some work for them. Their email states

> *"…Dave [the claimant] doing garden slabs – we are aware that Dave raised this piece of work with yourselves to check it was OK. This occurred outside of normal working hours."*

32. On the balance of probabilities, had the claimant clearly been a self-employed independent contractor, he would not have considered it necessary to check that he was able to do additional work for another customer.

33. The claimant told the Tribunal that he was asked for a "UTR" number and National Insurance number, and that because the respondent had asked for this, this demonstrated that he was not an independent subcontractor. However, the Tribunal accepts the respondent's account that this "UTR" is part of HMRC's Construction Industry Scheme, a voluntary registration scheme for those in the construction industry employed who are self-employed. The Tribunal accepts that the respondent asked the claimant for his UTR number, as it was part of the scheme, which the Tribunal understands was instigated by HMRC to minimise tax fraud in the construction industry.

34. The claimant told the Tribunal that he was told he was on "a high rate of tax" because of his (accepted) failure to supply the respondent with his UTR number. He told the Tribunal that had he supplied his UTR number it would have "got the tax down". However, it is the respondent's case that he was paid gross because he had not provided his UTR number and that the claimant was told he was responsible for his own tax and national insurance as a consequence.

35. The Tribunal notes that when the claimant did eventually supply the respondent with a UTR number in November 2017, the respondent found it was invalid. The Tribunal notes that the claimant has been involved in the construction industry for twenty years and told the Tribunal that he has worked both as an employee and a contractor. On the balance of probabilities, it is extremely unlikely that the claimant would not have known about or had a UTR, or been unable to obtain a valid UTR and provide it to the respondent.

36. It is accepted by the parties that the claimant had a stroke in June 2017 and was not able to work for a couple of weeks. The claimant accepts that he did not provide a sick note/fitness to work statement and that he was not paid sick pay or statutory sick pay and did not make any enquiries about this. The Tribunal was taken to a text message from the time of the claimant's illness where he notes that he "*can't afford to be ill*". It is the respondent's assertion that this reference is due to the fact that the claimant is self-employed and therefore not entitled to statutory sick pay.

37. The Tribunal was taken to a number of text messages between the parties which demonstrate on the balance of probabilities that the respondent offered work and the claimant accepted, and that on occasion the claimant was told not to turn up for work because he was not needed.

38. The claimant acknowledged that he used his own tools on site but said that all employees did this. In terms of his supervision on site he accepted that the tasks to be done for a particular day were left to his discretion and that he was left to delegate as site supervisor on a day-to-day basis and that no one was controlling his work on a day-to-day basis.

39. The claimant initially had his own vehicle to get to site, but this broke down and could not be used. It was the respondent's evidence that the claimant would have been expected to have his own vehicle, but that because he did not, they came to an arrangement whereby the claimant was able to hire one of the respondent's vehicles for to a hire charge of £50 per week and that the claimant would pay for any mileage over a weekly mileage allowance of 30 miles at a rate of 42 pence per mile. It was agreed that these charges would be deducted from any payment or payments owed by the respondent in accordance with his contract for services. This offer of and acceptance of this hire arrangement was documented in a series of text messages between the claimant and the respondent.

40. The claimant indicated that he had never received any payslips and that he was expecting to receive some. The respondent told the Tribunal that as that the claimant was not registered with the Construction Industry Scheme he did not get a "docket" and did not get payslips.

41. The respondent told the Tribunal that all other subcontractors are put on the Sage payments system, and are paid gross if they are not registered with the Construction Industry Scheme. The respondent further told the Tribunal that all subcontractors are paid a week in hand.

42. The claimant did not submit invoices but the parties agreed a day rate and he was paid on this basis once the respondent had authorised payment having approved the work that had been done. The claimant was paid £100 a day gross prior to January 2017 and then £120 gross after his break in January. The claimant told the Tribunal that he had believed that he was being paid £100 net and £120 net, but the claimant's evidence in this regard was not persuasive, as he was not initially able to say how much tax he would have been paying on this basis, or what the gross rate would have been. The respondent's evidence in this regard is preferred, which was that the going rate for the claimant's role on site was between £100 and £120 gross, which was what he was paid.

43. The claimant alleged that he was tracked using the respondent's van and told the Tribunal that he wished to know why. The respondent's evidence was that this was to monitor how many miles the claimant had done so that the respondent could reclaim from the claimant mileage in excess of the weekly allowance agreed.

44. The claimant told the Tribunal that he had filled in an HMRC online form and answered a series of questions which said that he was employed and not self-employed for tax purposes, but the Tribunal noted that the outcome of the online quiz depended on the answers given by the individual, and those answers given by the claimant on the printed version of the online form did not necessarily accord with the evidence that was before the Tribunal.

The Law

45. Section 230 of the Employment Rights Act 1996 sets out the definition of "employee" and "worker" as follows:

> *(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.*
>
> *(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
>
> *(a) a contract of employment, or*
>
> *(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

and any reference to a worker's contract shall be construed accordingly."

46. It is settled law that establishing whether an individual works under a contract of employment or a contract for services can only be established by examining multiple relevant factors (*Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, HC*).

47. In *Carmichael and anor v National Power plc 1999 ICR 1226* it was established that there is an 'irreducible minimum' without which it will be all but impossible for a contract of employment to exist, which is comprised of the factors of control, mutuality of obligation and personal performance.

48. *Pimlico Plumbers Ltd and another v Smith [2018] UKSC 29* held in relation to the issue of personal service in relation to s230(3)(b), i.e., whether an individual is a "worker", that a conditional right to provide a substitute may not be inconsistent with an obligation to provide services personally. The Supreme Court held that it could be helpful to assess the significance of any right to substitute by reference to whether the dominant feature of the contract remained personal performance on the part of the worker and what the limitations on that right to substitute were.

49. In *Bates van Winkelhof v Clyde and Co LLP and anor 2014 ICR 730*, the Supreme Court held that the specific wording of s230(3)(b) of the Employment Rights Act 1996 distinguishes between two kinds of self-employed people, being those who carry on a profession or a business undertaking on their own account and who enter into contracts to provide work or services for clients or customers, and those who provide their services as part of a profession or business undertaking carried on by someone else.

50. Section 13 of the Employment Rights Act 1996 deals with the right of an employee or worker not to suffer unauthorised deductions from their wages.

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

[…………………………………..]

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified."

51. The Working Time Regulations 1998 entitle full-time workers to 4 weeks paid annual leave plus 8 paid statutory bank holidays per year.

Application of the Law to the Facts Found:

The claimant's employment status

52. Applying the law as set out above to the facts found, the claimant is a “worker” in accordance with section 230(3) of the Employment Rights Act 1996, but not an “employee” in accordance with S230(1) and (2). The claimant became a worker in January 2017 on moving to become site manager for the respondent. Prior to that period, the claimant accepted that he had been a contractor for the respondent and had worked on several different sites for the respondent from the end of November to the end of December 2016. The claimant went away on holiday in January 2017 and was contacted by Luke Cleary on 16 January 2017 and was offered to be engaged on a single site as site foreman. From that period on, the Tribunal finds on the balance of probabilities that the claimant attended that site on a regular basis, was subject to instruction and inspection from the respondent, was engaged to offer his services personally with a degree of substitution which was significantly curtailed by the nature of the role he was engaged to perform, wore the respondent’s uniform on site regularly and therefore taking the factors before the Tribunal into account, meets the definition of a “worker” in s230(3).

53. This is for the reason addressed in *Pimlico Plumbers*, which is that the key element in establishing that an individual is a worker and not a self-employed contractor is if personal service is required of him.

54. The claimant did not have fixed hours. He was expected to work for approximately 8 hours per day and worked as long as was required to complete the tasks allocated for that day in whatever manner he deemed to be most appropriate. This is not incompatible with worker status. However, the respondent did not have the required degree of control over the claimant for him to be classed as an “employee”. It was also clear that there was not a regular obligation for the respondent to provide the claimant with work, such that there was a mutuality of obligation on the respondent to offer, and the claimant to accept work. Broadly, however, the claimant was, I find, required to accept the work when it was offered to him if he were to keep the site foreman’s role, due to the degree of continuity and personal service that this particular role required. It was also clear from emails in the bundle that the claimant felt it necessary to seek the respondent’s consent when doing work for others.

55. From the information presented to the Tribunal, it is clear that the claimant was not engaged as someone who enters into contracts to provide work or services for clients or customers, but instead was one who provided his services as part of a profession or business undertaking carried on by someone else.

56. The respondent offered the claimant no more work from 9 November 2017. For the avoidance of doubt, as the claimant has not established that he was an employee of the respondent, he is not entitled to notice pay on termination nor does he have any right to complain of unfair dismissal by the respondent.

The claimant’s entitlement to paid annual leave

57. The claimant, as a worker, is able to recover annual leave payments plus statutory bank holidays, and any unlawful deductions from wages under the Employment Rights Act 1996.

58. Neither party has provided the Tribunal with clear evidence of the claimant’s start date on site at the end of January 2017. In order to deal with the matters in a

way that is proportionate to the complexity and importance of the issues, it is assumed that the claimant began to be engaged as a "worker" as of Monday 23 January 2017, that is, the week after the parties contacted one another on 16 January to establish the claimant's availability.

59. The claimant was engaged as a worker from 23 January 2017 to 9 November 2017. This is a period of 9.5 months. A worker's annual leave entitlement is to 20 days plus 8 statutory bank holidays. A pro rata annual leave entitlement is owing to the claimant for 9.5 months worked which is 16 days plus 5 statutory bank holidays, giving the claimant an entitlement to 21 days annual leave, paid at £120 per day gross. This is a total sum of £2520, on which the parties must account for tax and National Insurance.

The claimant's claim for "vehicle charges"

60. It is clear from the evidence before the Tribunal that the claimant and the respondent exchanged a series of text messages in which the terms of a van hire arrangement were agreed. It is clear from the messages that the respondent offered the van as the claimant's van was out of use and a van was needed to carry out the work for which the claimant was engaged.

61. The respondent offered the van, at a rate of £50 per week, which included 30 miles per week mileage allowance. It was further agreed that miles driven over the 30 miles allowance would be charged at 42 pence per mile. The claimant accepted this offer, which was communicated by text message, by way of further text messages. It is clear from the messages that the charges were to come out of the claimant's future wages payments. It is also clear that the agreement was made in advance of the respondent's van being hired and before any deductions were taken from the claimant's pay.

62. Are these charges unauthorised deductions from the claimant's wages contrary to s13 of the Employment Rights Act 1996? The claimant alleges that they are.

63. The text messages contain the terms of the deal reached between the parties, in that they contain the offer of hire by the respondent, the payment terms and agreement by the claimant in advance of the deductions being made.

64. Can this be said to be written evidence of terms of the contract between the parties having been agreed, such that the subsequent deductions were authorised as per s13 of the Employment Rights Act 1996?

65. On a careful reading of s13(1)(b), a worker must "*previously signify in writing*" his "*agreement or consent*". There is no existing case law as to whether an exchange of text messages can be classified as being "in writing" so as to comply with s13(1)(b), but there exist no rules of contractual interpretation that suggest that this cannot be the case.

66. The claimant has clearly signified his agreement to the terms offered by the respondent. Those terms are clearly and fully set out in the exchange of text messages. The claimant clearly agreed in advance to the deduction in his texted responses. Any mischief that s13 was designed to avoid, whereby pressure is placed

on a worker to consent to deductions retrospectively, or without full information as to what the terms of the agreement are, is not present here. The terms of the claimant's agreement are clear.

67. I therefore find that the exchange of text messages between the claimant and the respondent signified the claimant's agreement in writing to the deductions for the hire of the van and mileage charges, such that these sums were not unlawfully deducted from the claimant's wages.

The claimant's entitlement to wages

68. The claimant told the Tribunal that he was not paid for:

i. A "week in hand" worked for which he should have been paid on 4 September 2017. When his engagement was terminated, he was not paid for the week that he was owed from that period although the claimant provides no information as to how much he was owed for that period;

ii. 13 days' work from 13 October 2017 to "Friday 30 October 2017", which the claimant states ought to have been paid at £150 per day;

iii. Underpayments of wages on 29 August 2017 and 1 September 2017, of £300 and £200 respectively.

69. The Tribunal notes from the claimant's time sheets that are in the bundle at pages 66 and 67 that the claimant did not work 13 days in that time period. 30 October 2017 was not a Friday, but a Monday. The time sheets in the bundle show that the claimant worked 11 days from Monday 13 October to Friday 28 October.

70. The Tribunal does not have sufficient evidence available from the parties to determine the issue of the claimant's unpaid wages claim. Case management orders requiring disclosure of relevant documents are set out at the end of this decision.

Tax and National Insurance claims

71. The Tribunal has no jurisdiction to consider this element of the claimant's complaint, which must be referred to HMRC in the first instance.

Case Management Orders

72. In order that the Tribunal may determine the claimant's complaint of unpaid wages, the parties are given 21 days from the date on which this decision is sent to the parties to provide to the Tribunal and to each other, evidence of the days and hours worked by the claimant for the following periods:

a. Week commencing 28 August 2017
b. Week commencing 4 September 2017
c. The period Monday 13 October 2017 to Monday 30 October 2017.

73. The respondent is expected to search for payment and accounting records showing any payments made to the claimant that correspond with these periods

worked and to disclose these, whether they support or undermine its own case. In the event that the respondents' disclosure investigations uncover failures in payment by the respondent, the respondent is invited to make such payments to the claimant to resolve the outstanding dispute between the parties, to minimise delay and expense.

74. The claimant is hereby instructed to search his own financial records and work records to discover whether he is in possession of any evidence which may support or undermine his own case and likewise disclose these to the respondent and the Tribunal within 21 days of the date on which this decision is sent to the parties.

75. To minimise delay and save expense, the Tribunal will seek to determine this issue without a hearing. Should either party be of the opinion that a hearing is necessary, they should inform the Tribunal in writing as to why they consider this to be necessary at the same time as they comply with the case management order for disclosure set out above.

____

Employment Judge Barker

Date_5 October 2018

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

8 October 2018

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.