



EMPLOYMENT TRIBUNALS

Claimant: Ms K Siva

Respondent: Spires Engineering Consultancy Limited

Heard at: By CVP

On: 6 April 2021

Before: EJ Milner-Moore

Representation

Claimant: In Person

Respondent: Ms Stroud (Counsel)

RESERVED JUDGMENT

1. The claimant was a partner and was not engaged by the respondent as an employee or a worker (as defined in section 230(3)(b) of the Employment Rights Act 1996).
2. The claims of unauthorised deduction from wages and under the Working Time Regulations 1998 (for unpaid holiday pay and for breach of maximum weekly working time) are struck out pursuant to rule 37(1)(a) of the Tribunal's procedure rules.

REASONS

1. The claimant brings claims of unauthorised deductions from wages and breach of the Working Time Regulations 1998 in relation to unpaid holiday pay and maximum weekly working time. Such claims may only be brought by person who are either employees or workers. The respondent's position is that the claimant was not a worker or an employee because she was a self-employed partner in the respondent business. This case was listed for a three hour open preliminary hearing to consider "*strike out and whether the claimant was an employee or a worker of the respondent*".

2. The hearing took place via CVP. I heard evidence from the claimant and from Mr Tayab Alam, the other member of the partnership and the Managing Director of a related limited company. I also received a bundle of documents of 120 pages. The bundle contained a number of letters or emails from individuals who were business contacts of Mr Alam's, the general thrust of which was that the claimant introduced herself to them as Mr Alam's business partner. These individuals did not attend to give evidence and so I did not regard it as appropriate to attach any significant weight to these documents. In addition, the parties provided written closing submissions after the hearing.

Facts

3. In light of the evidence, I made the following factual findings. The respondent is engaged in the business of designing aircraft interiors. Mr Alam was a managing director of a limited company sharing the same name as the respondent business. The claimant had been working as a recruitment consultant and running her own consultancy business when she was introduced to Mr Alam. She joined the respondent business on 2 January 2020. The expectation was that she would use her recruitment expertise to the benefit of the business and that she would also engage in sales and business development. Whilst working with the respondent the claimant had various titles including Chief Operating Officer and Business Development Manager.
4. The only document that defines the relationship between the claimant and the respondent is a Partnership Agreement made between the claimant and Mr Alam on 27 February 2020. The document was drafted by a contact of Mr Alam's. It was sent to the claimant under cover of an email that read "*Hi Kelly, I've attached our partnership contract. Please make amendments as you see fit. In addition, please can you add commission bonus structure*". Somewhat confusingly the file name of the attachment was "*Director contract*" but the document attached was clearly a partnership agreement.
5. I have set out below the relevant terms of the Partnership Agreement.
 - a. Clause 1 provides "*By this Agreement the Partners enter into a general partnership (the Partnership) in accordance with the laws of England. The rights and obligations of the Partners will be as provided under the common law or applicable legislation of England (the Act) except as otherwise provided here.*"
 - b. The firm name of the partnership was "Spires Engineering Consultancy Limited" and the purpose of the partnership was said to be to "*jointly manage Spires UK*".
 - c. The partnership agreement stated that the claimant would make a "*capital contribution*" of £240,000 to the partnership "*in cash*" in return for which she would receive a 30% interest in the business. Although the agreement referred to a capital contribution being made in cash it then went on to state "*This contribution will be set as a sales target which will be paid to Tayab Alam at the end of the financial year 2020*". It was not clear how it would be determined whether the sales target had been met (e.g. whether it referred to orders received or actual client fees paid into the business).

- d. The partnership agreement provided that *“decisions regarding the distribution of profits, allocation of losses and the requirement for Additional capital contributions as well as all other financial matters will be determined by the Majority Shareholders”*. The agreement also provided that *“the managing partners”* would be liable for two loans amounting to £25,000 and that every effort would be made to pay off a separate loan in the sum of £249,000 which had been made to Spires Engineering and Mr Alam.
 - e. The agreement provided *“Subject to the other provisions of this Agreement, the net profits and losses of the Partnership, for both accounting and tax purposes, will accrue to and be borne by the Partners according to the following schedule: Tayib Alam 70% and Kelly Siva 30%”*. On dissolution, any assets would be distributed in accordance with this ratio.
 - f. Decisions regarding the distribution of profits and losses and other financial matters were to be made by the *“Majority Shareholder”*, i.e. Mr Alam, who could also dissolve the partnership or terminate the partnership of a partner on grounds of unsatisfactory conduct by giving three months’ notice.
 - g. The Managing Partners had *“management and control of the day to day business of the Partnership”* and only a Managing Partner had *“the authority to bind the partnership in contract”*.
 - h. Partners were entitled to draw against a share of profits. Additionally, the agreement provided for the claimant to *“be paid a salary of £4000 monthly, however, this is after all monthly overheads have been settled. Any monies owed to Kelly Siva will be recorded as a debit and every effort will be made to clear this through the course of the year”*.
 - i. The agreement provided for the claimant to have 28 days holiday per year.
 - j. The partners were constrained from engaging in any competing business and were required to devote their time and attention to the business in so far as necessary.
6. The partnership agreement does not appear to have been prepared with much care. Certain important terms are undefined and the claimant’s name is incorrectly set out. The agreement also required the claimant to achieve a £240,000 sales target by the end of the financial year 31 March 2020 (i.e. within just over a month of the signing of the agreement) but was silent about what this would mean in practice, or what would happen if the claimant failed to do so. Asked about this, Mr Alam said that it wouldn’t really have mattered if the claimant had not hit the target, he just wanted to see that she was bringing business in.
7. When giving evidence, the claimant accepted that she was a partner in the business and did not state that the partnership agreement was a sham or did not reflect a true agreement that she would be a partner or as to the terms that would apply. However, she maintained that she was also an employee and said that she had been expected to be made a director of the limited company. Mr Alam accepted in evidence that it was intended that she would be so appointed in future. Asked about the fact that the partnership agreement made her liable for debts, the claimant did not at first appear to understand that she was liable under the agreement for 30% of

the losses as well as entitled to 30% of profits. She accepted that she had a technical entitlement to draw against a share of profits but said that she had no practical opportunity to do so as Mr Alam controlled the accounts and she had no access to the businesses books until March. I accept the claimant's evidence that she did not initially have access to accounts or the ability to make payments and that there was a delay before she could access the company's books.

8. Although the partnership agreement stated that the claimant would be paid £4,000 month after monthly overheads were settled, it is common ground between the parties that the claimant never actually received a monthly payment of that amount. The payments made to her were of varying amounts from month to month and were much smaller than £4,000. No explanation was provided by Mr Alam about how the amounts paid were determined. I consider it likely that he decided how much could be paid by reference to the business cashflow at the time. There is a meeting note relating to a meeting which took place on 13 April 2020 which records that at that time the accounts of the business were approximately £16,500 overdrawn with an available balance of approximately £5,000. A note headed commission records that it had been agreed that paying off secured company loans was a priority *"However, commission still should be paid to both TA and AS but at present this will be on a project per project basis"*. Mr Alam is recorded as having an action point to create an excel spreadsheet to record outstanding payments. The rest of the note records various action points for Mr Alam and the claimant – with tasks divided between the two according to their responsibilities.
9. On 14 April 2020, there was an exchange of whatsapp messages in which the claimant was pressing Mr Alam to sell "further" shares in the business so that she could have a 40% share in the business. The two negotiated a price for this increased share.
10. The claimant resigned from the partnership on 20 April 2020 citing concerns about Mr Alam's business practices and complaining that she had *"not been paid fairly. You have paid yourself for your current personal overheads and have not paid me the same as per our agreement."* At that point, despite working for approximately three and a half months and due to be paid (by her calculation) £14,770, the claimant had been paid only £2,760. Until she resigned the claimant raised no objection to the underpayments. Her evidence was that she was comfortable with the underpayments because the agreement provided that any shortfall was recorded as a debt owed to her. The claimant did not receive payslips during the period in which she worked for the respondent and was paid such sums as she received without any deductions in respect of tax and national insurance.
11. The claimant says that she was directed in the performance of her work by Mr Alam and that she worked long hours in consequence of his directions. Mr Alam's evidence was that he had the experience and expertise in the aviation field and so took the lead in areas where this experience was required. However, he says that he and the claimant worked as equal partners, dividing tasks between them by agreement and that he did not direct the claimant about how to perform her responsibilities, which related

primarily to HR and Sales and business development. The claimant has produced in evidence various whatsapp messages exchanged between them. The messages are not indicative of Mr Alam exercising control over what the claimant did or how she did it. On the contrary the tone and content of the messages is consistent with the two of them being equal partners who were dividing the tasks involved in running the business between them according to their particular skills and experience. Mr Alam is asked by the claimant to approve communications of a technical nature but that is unsurprising given that he had the technical expertise. From the messages it is clear that the claimant was keen to develop the business and that she took the initiative in areas that fell within her responsibility. The claimant had autonomy to make calls to prospective clients and to take work forward. The claimant accepted that she used her own initiative and expertise to try to improve the business, for example, she used her own "hub spot" account to create a CRM database for the respondent as the respondent did not have a CRM system.

Law

12. A general partnership is defined in section 1(1) of the Partnership Act 1890

"Partnership is the relation which subsists between persons carrying on a business in common with a view of profit"

13. Section 2 of the Partnership Act 1890 lists a number of factors which may or may not be indicative of the existence of a relationship of partnership including:

"The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular

a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such"

14. Equity partners will not generally be employees. However, there are different types of partnership arrangement, some of which, although they are labelled as partnership, are not inconsistent with the individual concerned also having the status of employee. Sitting at one end of the spectrum are those cases where an individual is held out to the world as a partner but, in reality, merely receives a salary and has no share in profits or liabilities. In such a case, it may be concluded that the true relationship

is one of employment, rather than partnership. At the other end of the spectrum are those cases where an individual fully participates in the equity, receiving a share of profits rather than salary and entitled to a share of assets on dissolution; in such a case the relationship is likely to be one of partnership. Other arrangements may fall somewhere between these two poles, for example, an individual may receive a fixed salary but also receive profits and may still be properly regarded as a partner.

15. In determining whether an individual is a partner the labels attached by the parties will not be determinative. As **Stekel v Ellice** [1973] 1 WLR 191 at 199G indicates

“What must be done, I think, is to look at the substance of the relationship between the parties; and there is ample authority for saying that the question whether or not there is a partnership depends on what the true relationship is, and not on any mere label attached to that relationship. A relationship that is plainly not a partnership is no more made into a partnership by calling it one than a relationship which is plainly a partnership is prevented from being one by a clause negating partnership: see, for example, Lindley on Partnership, 13th ed. (1971), p. 66.”

16. It will be important to establish whether the parties intended to create a relationship which satisfied the requirements of section 1 of the Partnership Act, rather than some different type of relationship (**Tiffin v Lester Aldridge** [2012] IRLR 391 paragraphs 17 and 21). In doing so it will be relevant to look at the partnership agreement. It may be that the partnership agreement genuinely, fully and completely expresses the agreement reached between the parties. Where one party contends that it does not fully capture the agreement reached, or correctly describe the true relationship, the partnership agreement may nonetheless provide a starting point against which other factors weighing in favour of, or against, partnership or employment may be assessed.

17. An agreement which makes provision for receipt of a share of profits is likely to be indicative of partnership;

“the absence of a direct link between the level of payments and the profits of the firm is in most cases a strongly negative pointer towards the crucial conclusion as to whether the recipient is among those who are carrying on its business. But the conclusion must be informed by reference to all the features of the agreement. Thus, for example, provision or otherwise for a contribution on his part to the working capital of the firm will be relevant. And it will be important to discern whether, expressly or impliedly, the agreement provides not only that acts within his authority should bind the acknowledged partners but also that their acts should bind him; for such is provided by s.5 of the Act to be a necessary incident of partnership but would, of course, be inconsistent with his status as an employee”

M Young Legal Associates Ltd v Zahid [2006] 1 WLR.

In the **Zahid** case the individual concerned in fact had made no capital contribution and was paid a salary rather than a profit share. He was nonetheless found to be a partner because it was the clear intention of the parties to the agreement that he should have the status of partner which was a necessity in order that the firm in question could continue to practice legally.

18. Employment is defined at section 230(1) Employment Rights Act 1996 as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

19. The features which make up the “irreducible minimum: of a contract of employment are: (a) an obligation to provide personal service on the part of the employee, (b) the exercise of a sufficient degree of control by the employer (control here means the ultimate ability of the employer to control the manner in which work is done rather than evidence of detailed control day to day), and (c) a mutual obligation to pay for work (on the part of the employer) and to do such work as is offered (on the part of the employee)
Ready Mixed Concrete SE v Min of Pensions and National Insurance.

20. Even where the elements making up the “irreducible minimum” are present, it will still be necessary to consider whether the overall picture is consistent with employment. It will be relevant to consider matters such as: whether the individual receives a wage or a profit share, whether the individual is undertaking risk and/or putting capital in to the business, whether the individual provides their own equipment, the extent to which the individual is free to work for others, whether the individual is subject to internal policies applied to employees and/or receives benefits usually received by employees (e.g. holiday pay, sick pay and so on), whether the individual is integrated and part and parcel of the business, what arrangements are applied in relation to tax and national insurance and how the contract can be terminated. In considering whether an individual has the status of employee the labels attached by the parties will not be determinative. Where it is demonstrated that any contractual terms do not reflect the true agreement of the parties at the time that the contract was concluded, such terms may be disregarded **Autoclenz Ltd v Belcher and others**[2011] IRLR 820. In assessing whether the written terms reflect the true agreement it will be relevant to consider the relative bargaining positions of the parties when the agreement was concluded.

21. Worker is defined at section 230(3) ERA 1996 as:

“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”.

22. In interpreting this section the courts have endeavoured to identify what distinguishes an individual who is to be regarded as a worker (under limb b of section 230(3) ERA 1996) from an independent contractor who is in business on his own account. Relevant factors will include the extent whether the individual is dependent on the organisation for work, or whether the organisation is one of a number of clients or customers of the individual’s business, and the extent to which the individual is integrated into the organisation’s operations.

23. The definition of worker was considered by the EAT **Byrne Bros (Formwork) Limited v Baird** in which Recorder Underhill QC (as he then was) stated

“(4) It seems to us that the best guidance is to be found by considering the policy behind the inclusion of limb (b). That can only have been to extend the benefits of protection to workers who are in the same need of that type of protection as employees stricto sensu — workers, that is, who are viewed as liable, whatever their formal employment status, to be required to work excessive hours (or, in the cases of Part II of the Employment Rights Act 1996 or the National Minimum Wage Act 1998, to suffer unlawful deductions from their earnings or to be paid too little). The reason why employees are thought to need such protection is that they are in a subordinate and dependent position vis- ...-vis their employers: the purpose of the Regulations is to extend protection to workers who are, substantively and economically, in the same position. Thus the essence of the intended distinction must be between, on the one hand, workers whose degree of dependence is essentially the same as that of employees and, on the other, contractors who have a sufficiently arm’s-length and independent position to be treated as being able to look after themselves in the relevant respects.

(5) Drawing that distinction in any particular case will involve all or most of the same considerations as arise in drawing the distinction between a contract of service and a contract for services—but with the boundary pushed further in the putative worker’s favour. It may, for example, be relevant to assess the degree of control exercised by the putative employer, the exclusivity of the engagement and its typical duration, the method of payment, what equipment the putative worker supplies, the level of risk undertaken, etc. The basic effect of limb (b) is, so to speak, to lower the passmark, so that cases which failed to reach the mark necessary to qualify for protection as employees might nevertheless do so as workers.”

24. The application of the test in section 230(3) ERA in the context of limited liability partnerships was considered in **Bates van Winkelhoff v Clyde and Co LLP**. Baroness Hale stated:

*“I agree with Maurice Kay LJ that there is 'not a single key to unlock the words of the statute in every case'. There can be no substitute for applying the words of the statute to the facts of the individual case. There will be cases where that is not easy to do. But in my view they are not solved by adding some mystery ingredient of 'subordination' to the concept of employee and worker. The experienced employment judges who have considered this problem have all recognised that there is no magic test other than the words of the statute themselves. As Elias J recognised in **Redcats**, a small business may be genuinely an independent business but be completely dependent upon and subordinate to the demands of a key customer (the position of those small factories making goods exclusively for the 'St Michael' brand in the past comes to mind). Equally, as Maurice Kay LJ recognised in **Westwood**, one may be a professional person with a high degree of autonomy as to how the work is performed and more than one string to one's bow, and still be so closely integrated into the other party's operation as to fall within the definition. As the case of the controlling shareholder in a company who is also employed as chief executive shows, one can effectively be one's own boss and still be a 'worker'. While subordination may sometimes be an aid to distinguishing workers from other self-employed people, it is not a freestanding and universal characteristic of being a worker.”*

Parties' closing submissions

25. I received written closing submissions from the parties. In summary, the respondent argues that, where an individual is in partnership, i.e. carrying on a business in common with others, under an agreement in which they are remunerated by reference to the profits of the business and entitled to a share of assets on dissolution, this is unlikely to be consistent with their being also an employee **Cowell v Quilter Goodison & Co Ltd** [1989] IRLR 392 or indeed a worker. Whilst in **Bates van Winkelhoff v Clyde and Co LLP** [2014] IRLR 641 the Supreme Court determined that an equity partner within an LLP could be regarded as a worker within the meaning of “limb b” of section 230(3), that decision was based on features which were specific to LLP's. In particular, partnerships established as LLPs under the Limited Liability Partnerships Act 2000 have a separate legal personality. The claimant in the **Bates** case could therefore establish that she had a contract, under which she was obliged to provide personal service to a third party (i.e. the LLP), which was not a customer or client of her business. She therefore met the statutory test in limb b of section 230(3). By contrast, a general partnership under the Partnership Act is not a separate legal entity; it is made up of the individual partners and claims against the partnership must be brought against the individual partners. An individual who is a partner in a general partnership cannot satisfy the test because she cannot show that she is providing services to “another party” with separate legal personality, she is merely providing her services to the collection of persons making up the partnership of whom she is one.

26. The claimant's written submissions were structured around the HMRC IR35 employment status test and its application to her case.

Conclusions

27. I have concluded that the claimant was a partner, engaged in partnership with Mr Alam with a view of profit, under a partnership agreement which provided for her to obtain a significant stake in the equity (contingent on her sales performance) and for her to receive remuneration which was directly linked to the profitability of the business. On that basis, I consider that she was not an employee of the respondent.

28. I reached this conclusion for the following reasons:

- a. I noted that the claimant had willingly signed the partnership agreement. The claimant did not attempt to argue that the partnership agreement was a sham or did not reflect the true agreement reached between her and Mr Alam at the time. However, whilst the claimant does not dispute that she was a partner, she considers that the partnership agreement does not reflect that there was also an employment relationship.
- b. Although I considered that the agreement was poorly drafted and that the claimant may not have fully understood all the arrangements (apparently having been so focussed on the ability to obtain a stake in the business and a share of profits and that she had not fully understood that she was also acquiring a matching share in the liabilities), I did not consider that the agreement was a sham or that it did not genuinely reflect the parties' intentions as to the nature of their relationship, i.e. that they were going in to business together as partners with a view to making profit.
- c. There was no evidence to suggest that the claimant expressed any reservations about its form, or that she attempted to renegotiate the agreement. I note that she was invited to propose changes to the agreement in the email that accompanied it.
- d. Nor was Mr Alam in a dominant position or able to compel the claimant to accept his terms. The claimant had previously been running her own recruitment consultancy and had not put any money into the respondent business. There was nothing to prevent her refusing to sign the agreement if she was unhappy about the terms or felt that they did not reflect the reality of the relationship.
- e. I therefore consider that it is appropriate to take the partnership agreement as a starting point in attempting to determine the nature of the relationship and the character of the partnership. In doing so I recognise that the label attached by the parties to the agreement is not determinative. I need therefore to determine whether this was a

partnership in name only, in which the claimant could also have the status of employee, assuming that she could meet the requisite criteria.

- f. Looking at the substance of the partnership agreement and section 1 of the Partnership Act, I have concluded that the claimant agreed to participate in a general partnership with Mr Alam the purpose of which was to run Spires Engineering Limited with a view to profit. Whilst the claimant was not, in fact, required to make a capital contribution in cash, the agreement allowed for the claimant to obtain an equity stake in the business via sales generated. If she met the sales target, she would attain a 30% share of the business and any profits generated and would receive 30% of the assets on dissolution; however, she would also be liable for a 30% share in any losses.
- g. The claimant had not obtained an equity stake or received any formal distribution of profits when the arrangement terminated. However, I do not regard that as material given that all that is required under the statute is that the partnership is conducted with a view of profit. Furthermore, I considered it relevant that the claimant's monthly remuneration of £4,000 was still directly linked to the profits of the business, in that it would be paid to her only after the monthly overheads had been cleared. If the business made insufficient profit she would not be paid. She would merely have a debt against the partnership with no certainty as to when, or whether, this would ever be paid to her. The salary of an employee is not directly linked to profits in this way, it is one of the overheads of a business.
- h. The claimant was consistently underpaid during the period in which she worked with the respondent and only received a small fraction of the amounts due to her in remuneration. However, she raised no issue about this until her resignation.
- i. The equity and remuneration arrangements in the partnership agreement and the claimant's acquiescence to the underpayment of remuneration were consistent with the claimant having the status of a partner whose remuneration was directly linked to the profits generated by the partnership. Although the claimant explained this by saying that she was comforted by the fact that these sums were being recorded as a debt, that would not have made any difference if the partnership never made a sufficient profit. In signing up to these remuneration arrangements the claimant was accepting a risk that she would never receive full payment if the business did not generate sufficient profit.
- j. The claimant states that she had no control over the partnership's finances and that she acted under Mr Alam's direction. I accept her evidence that she did not initially have access to accounts or the ability to make payments and that there was a delay before she could

access the company's books. I also note that the partnership agreement did give greater control to Mr Alam in certain respects as the majority shareholder in the partnership. As majority shareholder the agreement provided that he could take decisions regarding financial matters, including the distribution of profits, and could terminate the claimant's partnership for conduct reasons. However, I do not consider that control of these aspects is indicative that this was not a genuine partnership. It is unsurprising that the partnership agreement provided for the claimant to have a more limited role in circumstances where she was a recent joiner (who had yet to provide the required contribution) to a business which had been established by Mr Alam and in which he owned the lion's share. I also did not consider that the evidence established that Mr Alam controlled the way in which the claimant performed her responsibilities under the partnership agreement. It is evident that the two worked together collaboratively, each taking the lead in their respective areas of responsibility and delegating to each other and working together as necessary.

2. Additionally, I have concluded that the claimant cannot establish that she is a worker within the meaning of section 230(3)(b) ERA 1996. I have reached that conclusion in light of the matters set out at (a) to (j) above and for the following reasons:
 - a. I recognise the need to focus on the wording of the statutory test in section 230(3)(b). However, it is difficult to reconcile the wording of the section with the claimant's partnership with Mr Alam.
 - b. The partnership in question was a general partnership, having no independent legal personality of its own. Whilst the claimant agreed to provide personal services as part of the partnership, it cannot be said that she had contracted to do so with "another party to the contract" in circumstances where the partnership had no legal personality. The decision in **Bates** is authority only for the extension of worker status to those who are partners within LLPs, which do have a separate legal personality independent of the partners which make up the LLP. It does not establish that persons in other general forms of partnership can also be workers.
 - c. Even leaving aside the technical question of legal personality, I do not consider that the claimant's partnership can properly be regarded as conferring worker status. I have considered the explanation in the **Byrne Bros** case that s230(3)(b) is intended to draw a distinction between those who are akin to employees in their dependency/subordination and so equally vulnerable to being required to work long hours or to being underpaid and those who are independent. I also recognise that the required "pass mark" is lower for an individual seeking to show worker status than to show employment status. I accepted that the claimant could be said to be

integrated into the business of the partnership. I have also found that the claimant was subordinate in some respects (as Mr Alam controlled the financial position and could terminate the partnership). However, I did not accept that he exercised control over the claimant's working hours or how she discharged her responsibilities. I have also found he was not in a position to impose the terms of the partnership agreement on the claimant had she objected to them. It was significant and important therefore that the claimant had freely entered into a partnership agreement under which she agreed to take the risk, inherent in running one's own business, not only that she would not receive profits but also that she would not receive her basic remuneration unless the overheads had been cleared. That in my view makes it inappropriate to view her as a worker, needing protection from deduction from wages, when it was inherent in the nature of the partnership that she had entered into that she freely undertook the risk that she would not be paid if the business did not succeed.

3. In the circumstances, the claimant has failed to establish the requisite status to bring complaints of unauthorised deductions from wages, for unpaid holiday pay and breach of the Working Time Regulations 1998 in relation to maximum weekly working time. These are claims that can only be brought by employees or workers. Accordingly, the claims have no reasonable prospects of success and are struck out pursuant to rule 37(1)(a) on the basis that they have no reasonable prospects of success.

Employment Judge **Milner-Moore**
Dated 24 May 2021

Date : 8/6/2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS