



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr R Stringer

AND

Respondent
Jurassic Couriers Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD BY VIDEO (VHS)

ON

13 January 2023

EMPLOYMENT JUDGE GRAY

Representation

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT

UPON the Respondent failing to attend or be represented at this hearing,

AND UPON first considering the information available, the tribunal proceeded to hear the claim in the absence of the Respondent under Rule 47 of the Employment Tribunal Rules of Procedure 2013.

The judgment of the tribunal is that:

- the Claimant is a worker within the meaning of section 230(3) of the Employment Rights Act 1996 and a worker within the meaning of regulation 2(1) of the Working Time Regulations 1998.
- the Respondent made unauthorised deductions from the Claimant's wages and is ordered to pay him the gross sum of £1,080.16 (gross), comprising the following elements:
 - £946.51 (gross); underpayment for the pay periods 6 December 2021 and 20 December 2021.
 - £133.65 (gross); wages for 2 days training (19 and 20 November 2021) (£8.91hr x 15 hrs).

- **The Respondent has failed to pay the Claimant's holiday entitlement and is also ordered to pay him the sum of £66.82 (gross) representing 7.5 hours / 1 day.**

REASONS

Background

1. The claim form was presented on 7 March 2022.
2. The Claimant commenced the Early Conciliation process with ACAS on 8 February 2022 (Day A). The Early Conciliation Certificate was issued on 8 February 2022 (Day B).
3. Accordingly, any act or omission which took place on or after 9 November 2021 (which allows for any extension under the Early Conciliation provisions) is in time so that the Tribunal has jurisdiction to hear that complaint.
4. The Claimant says he worked for the Respondent from the 19 November 2021 to the 7 December 2021 as a Driver.
5. The Claimant claims holiday pay and arrears of pay as a worker of the Respondent.
6. No time limit jurisdictional issues arise in this claim.

Non-attendance of the Respondent

7. This hearing commenced after approximately 10 minutes of waiting for the Respondent to make contact or join the hearing. No contact was made by the Respondent by that time. Evidence was then affirmed by the Claimant to confirm the amounts claimed as set out in his claim form and that he considered himself to be a worker as he was not pursuing a business activity on his own account.
8. The Respondent in the Response Form asserts that that Claimant caused damage to two vehicles, costing more than he earned, and there was an unpaid parking ticket. The Respondent asserts the Claimant was self-employed.
9. No evidence has been presented by the Respondent to support either assertion, in particular no written confirmation with the Claimant of an entitlement to deduct wages before such deductions were made.

Summary of relevant law

10. The protection of wages provisions in part II of the Employment Rights Act 1996 (ERA), apply to the wider category of 'worker'.

11. A 'worker' is defined in section 230(3) of the ERA as an individual who has entered into or works under (or, where the employment has ceased, has worked under):
- a. a contract of employment (defined as a 'contract of service or apprenticeship'), or
 - b. any other contract, whether express or implied, and (if 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.
12. The definition potentially covers a wide range of individuals who provide personal services under a contract, including many casual and freelance workers who are not paid by PAYE. However, it is not intended to cover self-employed people who are genuinely pursuing a business activity on their own account.
13. The definition of worker in section 230(3) of the ERA is identical to that used in most other employment legislation which applies to workers; for example, the Working Time Regulations 1998 SI 1998/1833 (WTR).
14. Section 13 of the ERA applies to workers and provides them with the right not to suffer an unauthorised deduction from wages. A deduction needs to be authorised by virtue of a statutory provision or a relevant provision of the worker's contract. Or, where a worker has previously signified agreement in writing.
15. Regulation 14 of the WTR applies to workers and enables them to claim for accrued but untaken holiday which has not been paid after the termination of the working arrangement.

Decision

16. The Claimant has confirmed under oath the amounts claimed, as set out in his claim form, and that he fits the worker definition. Judgment is therefore made as set out above.

Employment Judge Gray
Date: 13 January 2023

Judgment sent to Parties: 26 January 2023

FOR THE TRIBUNAL OFFICE