EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Z Kankevich	and	Mr Jason Cocks t/a JC Cleaning Services

Preliminary Hearing held at Reading on: 15 January 2017

Before Employment Judge: Mr SG Vowles (sitting alone)

Appearances
For the Claimant: In person
(Assisted by Ms M Maniak-Griffiths - Polish Interpreter)

For the Respondent: Mr G Lomas, Consultant

PRELIMINARY HEARING JUDGMENT

1. During the period 1 November 2005 to 20 June 2017 (the date of her ET1 claim) the Claimant was a worker within the meaning of section 230(3) Employment Rights Act 1996. She has the right to pursue claims of unauthorized deductions from wages (holiday pay).

2. A case management order regarding the full merits hearing was made separately.

3. Reasons for this judgment were given orally at the hearing. Written reasons are also attached at the request of the Respondent.

REASONS

1. This is a public preliminary hearing at which I am required to consider the status of the Claimant and whether she was a worker and entitled therefore to bring claims of unpaid wages and unpaid holiday pay.

Evidence

2. I heard evidence on oath from the Claimant, Mrs Zhanna Kankevich, and from the Respondent, Mr Jason Cocks. I also read documents in a bundle of documents provided by the parties.

Relevant Law

3. Worker status is defined in section 230(3) of the Employment Rights Act 1996:

> *"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 a contract that of a client or customer of any profession or business undertaking carried on by the individual."*

4. The leading case on worker status is the Supreme Court decision in Bates van Winkelhof v Clyde and Company LLP [2014] ICR 730 in which the following was said:

> *"First the natural and ordinary meaning of "employed by" is employed under a contract of service. Our law draws a clear distinction between those who are so employed and those who are self-employed but enter into contracts to perform work or services for others.*
>
> *Second, within the latter class, the law now draws a distinction between two different kinds of self-employed people. One kind are people who carry on a professional business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them. The other kind are self-employed people who provide their services as part of a profession or business undertaking carried on by someone else. The focus is on whether the purported worker actively markets his services as an independent person to the work in general, a person who will thus have a client or customer on the one hand, or whether he is recruited by the principal to work for that principal as an integral part of the principal's operations. In a general sense the degree of dependence is in large part what one is seeking to identify. If employees are integrated into the business, workers may be described as semi-detached and those conducting a business undertaking as detached. Whether there is a relationship of subordination is clearly important in distinguishing a worker from those genuinely on business on their own account."*

Decision

5. The Respondent claimed that the Claimant was self-employed and did not fall within the definition of a worker. He said that she was running her own cleaning company.

6. Taking account of that statutory definition and also the principles taken from the Bates van Winkelhof case, I find that the Claimant did have the status of a worker during the period 1 November 2005 to the date of her claim which is 20 June 2017.

7. The Claimant was not in business on her own account although she does have three separate cleaning jobs – in the morning working for the Respondent; in the afternoon working for a school; and in the evening working for a college – but there is no evidence that she is in business as a one person cleaning company.

8. I find that there was the required relationship of subordination which made her relationship with the Respondent one of a worker. She was an integral part of the Respondent's operations. It is clear from the timesheets and bank payments which are contained in the bundle of documents that she works regular hours for the Claimant – two hours per day, and has done so for a considerable period of about 12 years. She is required to, and does, perform her work personally. She has on occasions had her husband to assist her but there is no reliable evidence of substitution. Even where there is some degree of substitution, it is not fatal on in its own to worker status.

9. There is no paperwork produced by the Respondent to show what the status of the Claimant was. What relevant paperwork there is was provided by the Claimant at pages 46-50 of the bundle of documents, dated 31 May 2007 and 2 June 2007. The first document is a letter to the Claimant from the Respondent asking her to provide an application form because there was no application form on file. It enclosed an application form and she was requested to return it to the firm's address. It included the following paragraph:

   "Under the employment rules, all staff should have a national insurance number. Therefore, I regret I am unable to continue paying your wages until I receive your application form with your national insurance number."

10. The Claimant returned the application form which was headed *"JC CLEANING SERVICES STAFF APPLICATION FORM – Employment Details"* and signed the declaration at the end which read:

    "I confirm that the information given above is true, accurate and complete. I understand that should the information given by me prove to be inaccurate or misleading in any way, it may result in disciplinary action up to and including dismissal."

11. Mr Cocks in his evidence said that he had not seen this paperwork before and had no knowledge of it until it was produced by the Claimant as part of disclosure in this case. He said that it must have been sent to the Claimant by a "*work experience girl*" who helped him with paperwork for a while. I find that explanation wholly implausible, namely that a work

experience person would take it upon herself to issue employment-related documentation to the Claimant and that documentation should have been completed by the Claimant, sent back to the Respondent and Mr Cocks to be completely unaware of it. All of it is on the Respondent's headed notepaper. It is consistent with status as an employee or a worker and wholly inconsistent with self-employed status.

12. I find that there was mutuality of obligation. Although the Claimant did on occasions not turn up for work, she informed the Respondent in advance by text and she said that when she did not turn up for work, it was because she was ill or she was attending at her doctor's surgery or on holiday. It is true that some of the texts in the bundle do not refer to her giving a reason for non-attendance but clearly some did. The Respondent provided work to the Claimant over 12 years with regular hours and the Claimant accepted and did that work personally. It was with sufficient regularity to show that there was clearly an obligation to offer work and that the Claimant was under an obligation to accept it.

13. The Respondent exercised control over the Claimant's work, albeit rarely but he accepted that he did on occasions check her work.

14. I find that there was that relationship of subordination and dependence as mentioned by the Supreme Court in the Bates van Winkelhof case sufficient for me to find that the Claimant was a worker throughout.

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Employment Judge Vowles

Date 24 January 2018

Sent to the parties on:

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For the Tribunals Office