



EMPLOYMENT TRIBUNALS

Claimant:
Mr K Mohod

v

Respondent:
Mark Priestley SDT Limited

PRELIMINARY HEARING

Heard at: Reading **On:** 7 December 2018

Before: Employment Judge R Lewis (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: No attendance or representation

JUDGMENT

1. The Claimant was an employee of the Respondent and the Tribunal has jurisdiction to hear his claims for breach of contract and / or unlawful deductions of pay.

REASONS

Points of procedure

1. On 5 July 2017, the Claimant presented a claim form. He has acted in person at all times. It was a claim for several thousand pounds' arrears of pay.
2. Delays arose from a number of sources. The response of the Respondent was accepted on 31 January 2018. It said that the respondent has 68 employees. It stated at box 3.1 in its entirety: "*The Claimant was not an employee of Mark Priestley SDT Limited. The Claimant invoiced the company on a freelance basis.*" The Respondent advanced no case on the merits of the claim.
3. On 17 February 2018, this public hearing was listed to determine the issue "whether the Claimant was an employee or a worker and whether the Tribunal has jurisdiction to consider his claims."

4. The Respondent made at least two applications to postpone the hearing. By email sent at 8:37 pm on the day before this hearing, Mr Daniel Priestley indicated that the company would not attend this hearing and reiterated that the Claimant was not an employee.
5. The Claimant attended the hearing and gave evidence. He produced a bundle of documents, and I make the following findings.

Findings of fact

6. The Claimant worked for the Respondent (according to HMRC records) from 7 April to 30 September 2014 inclusive.
7. After that, he worked for other companies. A letter from HMRC of 12 April 2018 shows that there was no record of tax payment made during the period which is the subject of this case, namely August 2016 to February 2017.
8. The Claimant's circumstance of returning to the Respondent was that a friend called Mr Kalia, an agency driver who worked at the Respondent for a long period, telephoned to ask if he wanted to return to work for the Respondent, as there was work and a shortage of drivers.
9. The Claimant stated that he was then seen by Mr Dan Priestley, whom he knew from his 2014 employment. Mr Priestley, he said, offered him £12.00 per hour doing 12-hour night shifts, and told him that he would be placed on the payroll after three months' probation. The Claimant accepted the offer.
10. The Claimant stated that he was never issued with a contract of employment, or with payslips.
11. The Claimant said that the Respondent had a constant demand for drivers, and that there was never an occasion when he attended the depot to work and was told that there was no work. He could not recollect taking any holiday or absence. He understood his working arrangement to be subject to tachograph and regulation, and understood it to be approximately four nights on, four nights off, although there was frequent availability of overtime (subject again to regulation).
12. The Claimant stated in reply to my question, and was obviously puzzled to be asked, that he did not have the right to send anyone to cover for him.
13. At the start of each shift, which was 6.00 pm, the Claimant went to the Respondent's depot. A lorry was available. He checked the lorry. The manager, Mr Khalid, gave him written instructions for the shift. The instructions directed him what work to do, and the order in which he was to undertake deliveries and collections.

14. His shift was then spent in undertaking deliveries to and from the depot to venues in the general Heathrow area.
15. He did not always drive the same lorry (this is verified by the timesheets which show a number of registration numbers). The lorries which he drove were branded in the name of the Respondent.
16. The Respondent provided him with a uniform, which showed the company's name on a jacket and cap. The Respondent also provided a high-vis jacket, with the company name.
17. The Respondent arranged for the Claimant to have necessary access to any airport site which had security arrangements in place.
18. The vehicles which he drove were provided with the Respondent's tachograph and tracking systems. All his individual deliveries were also scanned and subject to tracking. Airport collections were sealed at the airport, and the seal could only be opened by the Respondent's staff at the Respondent's depot.
19. The Claimant stated that he was issued with a weekly timesheet at the start of each week. At the end of every shift, he completed the timesheet for that shift, and it was signed by a supervisor. It was his responsibility to retain the timesheets. At the end of a week, he handed in the completed timesheet to the Respondent's office and was given a photocopy of it.
20. The timesheets which I saw covered the period from late August 2016 to February 2017. I noted that they showed a number of different registration numbers. I noted also that they showed a number of different signatories as supervisors.
21. When he was paid, the form of payment was by bank transfer. The Claimant said this was to an account with ICI Bank. All payments were made by that method, and therefore a check of his bank statements for that bank in the relevant period will show all payments which he received. The Claimant said that he understood that he had been paid net, as that had been the previous arrangement when he worked for the Respondent.
22. The Claimant stated that as he had previously worked for the Respondent, he understood that he would return to work for it on PAYE, as he had done before. He stated that after he had started working, there was delay in making payment. (His claim form asserted that although he started in late August 2016, he received payment at the end of September, the end of October, the end of November, and then one payment in December and one at the end of January.)
23. He stated that he then had a discussion or discussions about payment with Mr Priestley. Mr Priestley asked him to provide an invoice or form of receipt so that payment could be processed.

24. The Claimant asked Mr Khalia for advice, and with his advice, prepared a form of invoice which he gave to the Respondent, and subsequently was paid. He stated that he only provided an invoice on one occasion. He was not sure when this happened.

Discussion

25. The Respondent elected not to attend this hearing. It submitted a response which made one point only. I heard only one side of this area of the case, and I must base my decision only on what I heard, and on the documents which I saw. I have therefore approached this matter in the absence of any documentation setting out the working relationship of the parties.
26. I see my task is to ask what was the true bargain between the parties and the reality of the relationship. In doing so, it is helpful to consider the basic elements indicated in Ready Mix Concrete 1968 2QB 497, and to ask, was there first mutuality of obligation between the parties; then did the Respondent have control over the Claimant's work; and finally, are there elements inconsistent with an employment relationship, and what weight is to be put on them.
27. I find first that between the two parties there was mutuality of obligation. The evidence which I have heard indicates an obligation on the Claimant to attend work when expected and required, and an obligation on the Respondent to provide him with a shift each time he did so. He did so in accordance with a regular established pattern. I attach weight to what appears to be the invariable practice of completing timesheets of each shift, and the Respondent's invariable practice of requiring them to be countersigned by a supervisor.
28. I find that there was control, in the sense that when he was at work, the Claimant worked wholly within the Respondent's systems and management. I see this as a totality: the branding of uniforms and vehicles; the detailed written instructions, with security and access arrangements; the checked timesheet, are all part of rigorous systems of control.
29. I accept that there were in the arrangements matters inconsistent with an employment relationship. They are all sides of the same point, but I refer to the absence of paperwork, and the system for payment, including the occasion when the Claimant submitted an invoice. I have decided to attach little weight to those matters in the absence of clarification or evidence from the Respondent. I note that they were all matters in the unilateral control of the Respondent, and I do not find that by submitting an invoice as a condition of being paid, the Claimant changed the nature of their relationship.
30. I find that the Claimant was an employee of the Respondent and therefore the Tribunal has power to hear this claim as a claim for breach of contract alone if required.

31. So that the parties are under no misunderstanding, I add that it follows that if I were wrong about employment status, or if the Claimant were not an employee, I would by the same reasoning have found that he was a worker for the Respondent, and that therefore the Tribunal has power to hear this claim as a claim for unlawful deductions of wages.
32. A case management order has been made separately. I would urge both parties equally to obtain professional advice.

Employment Judge R Lewis

Date: 7 December 2018

Sent to the parties on: 9 January 2019

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For the Tribunal Office

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