



# EMPLOYMENT TRIBUNALS

**Claimant: Mr T Sodipo**

**Respondent: Positive Mental Health Ltd**

**Heard at: London Central**

**On: 7 November 2019**

**Before Judge: Employment Judge A Isaacson**

**Representation**

**Claimant: In person**

**Respondent: Not in attendance**

## JUDGMENT

**The Judgment of the Tribunal is as follows:**

- 1. The correct name of the respondent is Positive Mental Health Ltd.**
- 2. The claimant's unauthorised deduction from wages claim succeeds.**
- 3. The respondent is ordered to pay to the claimant the sum of £24.50 being the difference of £2.50 per hour for the 9.75 hours worked on 30.1.19 but paid at an hourly rate of £12.50 instead of £15 per hour.**
- 4. The respondent is ordered to pay to the claimant the sum of £142.50 for 9.5 hours worked on the 20.2.19 but not paid (9.5 x 15).**
- 5. The total amount the respondent is ordered to pay to the claimant is £166.88.**

# REASONS

## Background

1. The claimant presented a claim form on the 3 June 2019, after entering into early conciliation on 4 March 2019. The acas certificate confirmed the receipt of the notification as being on 4 March 2019 and the certificate was issued on the 21 March 2019. The claimant's time for presenting a claim form was extended by 17 days.
2. A notice of claim was sent to the respondent by letter dated 13 September 2019. The letter included a notice of the full hearing listed for 7 November 2019. It is clear to the Tribunal that the respondent received this notice of hearing as they filed a response on the 16 October 2019.
3. On the morning of the hearing the Tribunal took steps to contact the respondent to enquire if they were attending the hearing. The respondent's spokesperson confirmed that they would not be attending as they thought they didn't need to as they had filed a response but would now ask for an adjournment.
4. The Tribunal refused the adjournment on the basis it was clear the respondent had received the notice of the hearing; the claimant had attended and it was still possible to go ahead and have a fair hearing as the respondent had set out their defence on their response form. The Tribunal also took in to account the value of the claim and decided it would not be proportionate to adjourn to another date.

## Claims and issues

5. The claimant is claiming outstanding wages for the 9.5 hours he worked on the 20 February 2019 and for the difference between £15 per hour and £12.50 he was paid for the 9.75 hours worked on 30 January 2019.
6. The respondent argues that the claimant is not an employee or worker and therefore the Tribunal does not have jurisdiction to hear his claim for outstanding wages. In addition, the respondent argues that the work the claimant did on the 20 February 2019 was not authorised.

## law

7. The right for a worker not to suffer unauthorised deductions from wages is set out in section 13 of the Employment Rights Act 1996 ("ERA").
8. Section 230(3) ERA defines a worker:  
*"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."*

9. The first thing a Tribunal should do is to establish if there was a contract. The Tribunal should determine the source of the legal relationship and whether there is a contract or not. The Tribunal is not bound by labels but should look at the true intentions of the parties.
10. It is important to draw a distinction between employees, workers and those who are truly self-employed and in business on their own account. Is the claimant marketing his services to the world in general or recruited by a principal to work for that principal as an integral part of the principal's operations? Is there a degree of dependence or a relationship of subordination? Did the claimant provide a personal service or could he be substituted?
11. The Tribunal should look at the whole set of circumstances to apply the law to the facts.

## **Findings**

12. At the hearing the claimant gave evidence under oath and produced a copy of two sample invoices and a copy of a time sheet dated 20 February 2019.
13. The claimant came across as an honest and reliable witness. The claimant told the Tribunal that he joined the respondent agency in 2017. At the time he completed a registration form but never received a copy of a contract, despite requesting one. Therefore, there was no documentary evidence regarding the claimant's employment status.
14. The claimant explained that throughout the period 2017 until February 2019 the claimant obtained work exclusively from the respondent and was placed in the Daisy unit which is within the Avon and Wiltshire Mental Health Partnership. He would sometimes be told of available shifts by the respondent but would often be told directly by the Daisy unit. He looked after patients with challenging behaviour. He worked around 4-5 days per week in the unit.
15. He would then fill in a timesheet which was then authorised by the Daisy unit. He would take a photo of the timesheet and email it across to the respondent. The respondent used an umbrella company Elite Management & Consultancy Limited ("Elite") to process the payments to the claimant.
16. The Tribunal was shown two invoices from Elite addressed to the respondent regarding work done by the claimant. The invoice sets out the hours worked, the hourly rate and adds on VAT.
17. The Tribunal finds that the claimant had entered into a working relationship with the respondent as a worker. Although the respondent may have referred to the claimant in any contract as self-employed, in reality the claimant worked exclusively for the respondent by being placed with one client. He provided personal service and had the skills and qualifications needed to care for the patients. He could not have substituted himself for someone else.
18. The claimant did not have a limited company and did not market his services as an independent person to the world in general. He was recruited to work via the agency in the Daisy unit and worked under all their rules and regulations and supervision.
19. The claimant demonstrated that his normal hourly rate was £15 per hour and there was no evidence from the respondent to explain why he should not have been paid £15 per hour for the hours he worked on the 30 January 2019 and the 20 February 2019.

20. The claimant's signed time sheet for the 20 February 2019 was evidence that he had worked the hours stated on the time sheet and that those hours had been authorised by the unit.
21. The claimant explained to the Tribunal that the respondent said to him that they would not pay the claimant for the hours he had worked on the 20 February 2019 until he had completed on line training. The claimant said he already had a valid qualification and it was not necessary to complete the training.
22. The Tribunal finds, based on the timesheet, that the claimant had worked 9.5 hours on the 20 February 2019 in the Daisy unit and that work had been authorised by the unit. Therefore, the claimant should have been paid for those hours worked.
23. The Tribunal accepted the claimant's evidence that his hourly rate was £15 per hour and there was no agreement to work at a reduced rate.
24. After the respondent refused to pay the claimant for the hours he worked in February 2019 or pay him an hourly rate of £15 which he had always previously been paid he decided to stop working for the respondent agency.
25. In summary, the Tribunal finds that the claimant was a worker of the Respondent. The claimant was entitled to be paid £15 per hour for the hours he worked in the Daisy unit which had been authorised by them.
26. The claimant is entitled to be paid for the hours he worked on the 30 January 2019 and on the 20 February 2019 at an hourly rate of £15 per hour.
27. The respondent is ordered to pay to the claimant the sum of £166.88: £9.75 x 2.5 for the hours worked on 30 January 2019 and 9.5 x £15 for the hours worked on 20 February 2019.

Employment Judge Isaacson

7<sup>th</sup> Nov 2019. Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

.08/11/2019

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FOR THE TRIBUNAL OFFICE