



EMPLOYMENT TRIBUNALS

Claimant

Mr I Vitoroi

v

Heard at: London Central

Respondent

Adam Renovation Ltd

On: 17 December 2019

Before: Employment Judge E Burns (sitting alone)

Representation

For the Claimant: In person

For the Respondent: Mr A Aleksandridis

JUDGMENT

The tribunal does not have jurisdiction to consider the claimant's claim for itemised payslips as he provided services to the respondent as a self-employed sole trader. He is not therefore entitled to pursue a claim pursuant to section 11 Employment Rights Act 1996.

REASONS

1. In a claim form presented on 15 July 2019, following a period of early conciliation from 11 June 2019 to 11 July 2019, the claimant said he had worked for and received wages from the respondent between 5 April 2018 and 4 May 2019 but had not received payslips for the entire period.
2. Specifically, the claimant said he had not received pay slips for two periods, the first being between 5 October 2018 and 4 April 2019 and the second being between 18 April and 4 May 2019.

3. The respondent says that the claimant was employed between 5 April 2018 and 5 October 2018 and was correctly issued payslips for this period. The respondent says that all subsequent payments were made by mistake as the claimant ceased to work for them.
4. The claimant worked for the respondent as a self-employed sole trader. The respondent made deductions for tax and Class 4 National insurance Contributions from payments made to him under the Construction Industry Scheme. The claimant provided me with a copy of a letter from the HMRC dated 25 April 2018 confirming he was registered under this scheme as a Subcontractor – sole trader. The claimant accepted that he was self-employed.
5. Section 8(1) of the Employment Rights Act 1996 provides a right to a written itemised pay statement. Under section 11(1)(b) of the Employment Rights Act 1996, if no payslip has been provided, an employee or worker may apply to an employment tribunal to determine what particulars ought to have been included or referred to on any missing payslip. For workers, the right has only been in force since 6 April 2019.
6. The definitions of employee and worker are set out in section 230 of the Employment Rights Act 1996.
7. According to section 230(1) Employment Rights Act 1996 an “employee” is “an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.’
8. Section 230(3) of the Employment Rights Act 1996 states that a ““worker” is an individual who has entered into or works under (or, where the employment has ceased, worked under)—

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(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.”
9. Here, as the claimant was self-employed and was not a worker or an employee of the respondent, the tribunal has no jurisdiction to consider the claimant’s application under section 11(1)(b) Employment Rights Act 1996.
10. I note that the evidence provided by the claimant shows that he continued to receive payments after 5 October 2018 for varying amounts which strongly suggest that he was providing services to the respondent throughout this period. I also note that it is entirely possible that the respondent continued to make deductions from the payments made to him. Having established the tribunal had no jurisdiction, I made no decision on either of these points, but I recommended that the parties speak to each other to seek to resolve the issue if possible.

Employment Judge E Burns

17 December 2019

Sent to the parties on:

19/12/2019

For the Tribunal:

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