



EMPLOYMENT TRIBUNALS

Claimants: Mr S Stewart, Mr I Murray, and Mr M Gott

Respondent: JGSUK Ltd

Heard at: Teesside Justice Centre

On: 1 & 22 June 2021

Before: Employment Judge Newburn

Appearances

For the Claimants: all in person

For the Respondent: Mr C Hudson (Director)

JUDGMENT having been sent to the parties and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided.

REASONS

1. The Claimants brought claims for unlawful deduction from wages and wrongful dismissal.
2. The Respondent submitted that it considered the Claimants were not employees, but instead they were all self-employed contractors and disputed all claims being brought against it.

The Issues

3. Employment status

3.1. Were the Claimants employees of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

3.2. Were the Claimants workers of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

4. If the Claimants were found to be workers, I would consider:

5. Unlawful Deduction from wages

- 5.1. Did the Respondent make unauthorised deductions from the Claimants' wages and if so, how much was deducted?
6. If the Claimants were found to be employees, in addition to the unlawful deduction from wages claim, I would consider:

7. Wrongful dismissal / Notice pay

- 7.1. Were the Claimants dismissed?
- 7.2. What were the Claimants' notice period?
- 7.3. Were the Claimants paid for that notice period?

Evidence

1. The matter had originally been set to be heard for one day, however upon attending the hearing both parties had produced their own bundles containing different documents and there were disputes regarding whether case management orders to exchange documents had been complied with. I asked that each party provide a copy of their bundle to the other party. The parties reviewed the bundles and confirmed they had previously seen the documents contained in the other party's bundle. I confirmed I would consider all the documents and gave the parties time to consider the other party's bundle before we began the hearing. However, it became clear that we would need a further day to hear all of the evidence and accordingly the parties returned for one further day on 22 June 2020.
2. Mr Stewart elected to be the lead Claimant and agreed he would cross examine the Respondent witnesses. Time was provided for him to speak with the other Claimants to take any questions they wished to put to the Respondent witnesses, and questions were taken from the other Claimants directly where they requested to ask them during evidence.
3. Mr Hudson elected to speak mainly for the Respondent and cross examined the Claimant witnesses. Time was provided for him to discuss the issues with Mr Dowson who attended for the Respondent. Furthermore, Mr Dowson was permitted to ask questions of the Claimant witnesses where he requested to ask them.
4. All witnesses gave evidence in chief by way of written witness statements and I had read the same prior to hearing oral evidence. Each of the Claimants gave their own evidence and evidence was also heard from Mr Thompson for the Claimants. The Respondent called evidence from Mr Hudson, the director of the Respondent company, and Mr Dowson, a manager of the Respondent company and previous shareholder.

Findings of Fact

5. On most incidents relevant to the issues in this matter, the parties' evidence was in direct conflict. Where this was the case, I had regard to all the evidence, both oral and documentary, and in considering the submissions of the parties, I made the following findings of fact on the balance of probabilities. This judgment is not a rehearsal of all the evidence heard but is based on the salient parts of the evidence upon which I based my decision.
6. Prior to 1 February 2020, the Claimants were all employees of John Gibson Hire and Sales Ltd ("JGHS"). Mr Hudson and Mr Dowson also worked for JGHS; Mr Hudson was a commercial manager for JGHS, and Mr Dowson was a contracts manager/business developments manager.
7. For some time, the directors of JGHS were looking to sell the company. In 2019 they were negotiating a potential sale or transfer. The Claimants were all aware of these discussions and it was anticipated JGHS would be sold or transferred by the end of 2019. The Claimants, like many other JGHS employees believed that once this sale had occurred, they would transfer to the new company and continue to work under the same terms of employment.
8. As a result of JGHS's poor financial position, at the end of 2019 this sale fell through. Mr Dowson, Mr Hudson, and Mr Thompson (who had all been employees of JGHS) all gave evidence that JGHS was having trouble paying its creditors as the business was not being run effectively. It became apparent to them that JGHS was likely to become insolvent and would not be purchased, and they decided to set up the Respondent company which would carry out the same business as JGHS.
9. Mr Thompson and Mr Hudson became directors of the Respondent company, and Mr Dowson had a shareholding in the Respondent company and a role in managing it.
10. In January 2020, the Claimants were all working for JGHS. Towards the end of January 2020, the Claimants were told by Mr Dowson to begin work on a contract at the Port of Tyne. As employees of JGHS the Claimants were usually directed by Mr Dowson as to where they would go and what work they would carry out. Accordingly, the Claimants did as they were directed and began working on a contract at the Port of Tyne.
11. Mr Dowson had arranged the contract with the Port of Tyne, and it is not clear whether the contract was between the Port of Tyne and JGHS or the Respondent company. Ultimately however, it appears that the Respondent company fulfilled the contractual work for the Port of Tyne project.

12. At the end of January 2020, JGHS informed the Claimants, and many other of its employees, that it would not be paying their wages for their work undertaken during January 2020.
13. At this point the Respondent company was in its infancy and in order to thrive it needed the employees to move from JGHS in order to carry out its first contract with the Port of Tyne. As most of the JGHS Employees had anticipated the imminent sale of JGHS, which would mean they were to transfer to the purchasing company, and JGHS did not pay them for January 2020, all save as for two JGHS employees moved to work for the Respondent company carrying out the same roles.
14. Mr Dowson and Mr Hudson both gave evidence that they did not deal with setting up and the day-to-day management side of running the Respondent company, and that Mr Thompson carried out this role. Mr Thompson gave evidence that it was always the Respondent's intention that all JGHS employees would become employees with the Respondent company under the same terms as they had worked with JGHS.
15. The Port of Tyne contract was one of the Respondent company's first contracts and it was therefore incredibly important to the Respondent. All parties agreed that the timeframe for the contract was incredibly tight. The Claimants were already working on this project and had discussions with Mr Dowson regarding moving to work for the Respondent.
16. Mr Hudson and Mr Dowson confirmed that they did not believe that it was legally possible for the Respondent company to have employees when payroll and other aspects of the business were not yet set up. In his oral evidence, Mr Dowson frankly and honestly conceded that he accepted this may have been a misunderstanding of the legal position on his part and ignorance of the law, however it was upon this basis that he had believed the Claimants were not employees of the Respondent company.
17. In their oral evidence, both Mr Hudson and Mr Dowson confirmed that they understood that in February 2020 Mr Thompson was setting up payroll. The Claimants all stated that they had completed HMRC new starter forms for their work with the Respondent company and Mr Thompson confirmed these forms were submitted to him for payroll purposes. Mr Thompson stated that he had obtained the relevant HMRC payroll authentication code for the Respondent company and was liaising with an accountancy firm to carry out payroll services. The accountants emailed Mr Thompson on 23 February 2020 to confirm receipt of his request to operate a payroll scheme for the Respondent company and it provided a quotation for carrying out that work. Mr Dowson's evidence was that he believed Mr Hudson was unhappy with the quote provided and payroll was not set up until much later in April 2020.

18. Mr Thompson's evidence was that once payroll was set up, all employees would be enrolled and paid correctly, however, until that time, it was agreed that in order to pay wages and keep track of what was to be paid, the Claimants were asked to submit invoices.
19. The Claimants each had submitted 2 invoices in their names relating to works done in February and March 2020. Mr Thompson confirmed that he drafted invoices for the Claimants in relation to their February and March wages. He confirmed that he took the information from their "weekly time record" sheets which the Claimants completed to confirm their working hours. The Claimants confirmed that when working for JGHS they kept weekly spreadsheets noting the hours they had worked which they used to submit each week in order to be paid. They continued to use the same JGHS time record sheets to track their hours when they began to work for the Respondent company and copies of the same were included within the bundle.
20. Mr Hudson and Mr Dowson confirmed that neither of them had control or really any dealings with the day to day running or setting up of the business and this was something they left up to Mr Thompson. Mr Thompson was clear in his evidence that it was always the intention that the Respondent would retain all people who worked for them as employees.
21. At the end of January 2020, the Claimants were concerned that they had not been paid their January 2020 wages from JGHS. Mr Murray sent a text message to Mr Dowson on 2 February 2020 (a copy of which was in the Claimants' bundle) stating that if the Claimants were not paid, they would not attend the Port of Tyne and work for the Respondent.
22. Further text messages in the bundle evidence Mr Dowson confirming to Mr Murray that if they were not paid from JGHS, the Respondent would pay the Claimants.
23. Throughout February and March 2020, the Claimants continued to attend the Port of Tyne to carry out their work. The Claimants' daily work for the Respondent remained the same as it had done when they worked for JGHS. Their roles were the same, they continued to take instructions from Mr Dowson, their rate of pay remained the same; essentially, their day-to-day activities remained unchanged from JGHS.
24. Each of the Claimants confirmed that they had been employees with JGHS and had believed they were employees with the Respondent company, with their roles remaining exactly the same. They all gave evidence confirming that whilst working for the Respondent company they were all required to follow orders set by Mr Dowson and were required to work the hours as set by the company at the pay rate set by the company and as directed by Mr Dowson. Whilst the need had never actually arisen, they were all confident that they would not have been permitted to send another person to carry out their tasks in their place if they were not able to do the job personally.

25. The parties confirmed that no paperwork was given to the Claimants that would represent a contract of employment and the Claimants did not sign any documentation confirming their agreement to have anything deducted from their salaries.
26. The Claimants all received ad hoc payments from the Respondent throughout the months of February and March 2020. There was a dispute between the parties regarding the reason these payments were made.
27. The Claimants stated that the payments received in early to mid-February, covered the loan of their JGHS January 2020 wages, and that the further payments made in March covered the sums due to them from the Respondent for their work done in February 2020 for which they had submitted invoices.

Payments made in early to mid-February

28. The Claimants' case was that the Respondent had agreed to loan them their JGHS January 2020 wages until such time as they were able to recover those sums from JGHS. In the interim, Mr Dowson agreed to assist them with bringing an Employment Tribunal claim against JGHS for sums due to them, including their January wages. The sum of the payments the Respondent made to each of the Claimants in early to mid-February matched the sums due to each of the Claimants from JGHS in respect of their January 2020 wages.
29. The bundle contained printed statements from Mr Stewart's bank to show the payments he received from the Respondent and the comments the Respondent made in the transaction reference section for each payment. For the payments made to Mr Stewart in early to mid-February, the transaction reference stated "*John Gibson*". On 24 February 2020, the transaction reference was "*Boots*" which Mr Stewart explained related to a payment to reimburse him for the purchase of a pair of work boots. On 27 February 2020, the transaction reference stated "*Expense form 26/02*" which Mr Stewart confirmed related an expense claim he had submitted. On 3 March 2020, the transaction reference stated "*Part Feb Salary*" and on 4 and 19 March 2020 the transaction reference read "*JGSUK*". Mr Stewart asserted the final payments related to payment for the work he carried out in February 2020.
30. In Mr Murray's ET1 he stated that the Respondent had loaned to him the JGHS January 2020 wages. In Mr Stewart's ET1 he stated the Respondent company had agreed to loan him his JGHS January 2020 wages "*until ACAS sorted [his] claim, then [he] would pay them back*". On 6 October 2020, Mr Stewart sent an email to the Employment Tribunal in these proceedings in which he stated that he understood the money from the Respondent "*was paid as a loan until [the Claimants'] ACAS claims against [JGHS] was settled.*" At that time, the claim against JGHS was still ongoing. In all of the Claimants' witness statements they confirmed that the money paid to them from the Respondent company was a loan

for the unpaid January 2020 JGHS wages and did not need *“to be paid back until the tribunal ruled in our favour and we received money from the liquidators of [JGHS].”*

31. In oral evidence Mr Murray and Mr Stewart varied from this position and stated that further to having transferred the money to the Claimants, Mr Dowson informed them that the Respondent did not wish to be repaid.
32. Having worked together previously, the Claimants and the Respondents were on good terms, certainly the contemporaneous text messages from January to March 2020 in the bundle between Mr Dowson and Mr Murray demonstrated their relationship had been on good terms.
33. On 20 April 2020 Mr Dowson sent an email to Mr Stewart which stated; *“To simplify things we loaned you £1,500 for January”*.
34. Mr Dowson was asked during his oral evidence why he had defined the payment as a loan and not an advance on salary, as per the Respondent’s stated defence. Mr Dowson stated that he had simply misspoken when he used the word ‘loan’.
35. The Respondent’s position was that the money paid to the Claimants in early to mid-February 2020 represented an advance on their salary from the Respondent company, which would later be offset against sums paid to the Claimants. This was meant to assist the Claimants so that they still had an income to cover bills further to the unexpected non-payment of their salary from JGHS. Mr Dowson’s oral evidence was that this was agreed with the Claimants in a big meeting held in the office.

March 2020 payments

36. In March 2020, each of the Claimants received further payments from the Respondent.
37. The Claimants asserted that these payments were to cover their wages for February 2020. In February 2020, each of the Claimants had submitted an invoice to the Respondent for the work they carried out for the Respondent in February 2020, copies of which were included in the bundle. The total payments made to each Claimant in March 2020 by the Respondent matched the amount each Claimant had claimed in the invoices they had submitted to the Respondent for the work they carried out in February 2020. The Claimants submitted invoices for works carried out in March 2020 and asserted that the Respondent failed to pay the same.
38. Mr Hudson and Mr Dowson’s evidence was that the Respondent had agreed to make staged payments to the Claimants, which had included advanced payments of their February salaries, paid in stages in early to mid-February. Their evidence was that the total sums the Respondent paid to each of the Claimants covered the

combined total of the February and March 2020 invoices that each of the Claimants had submitted in relation to the works they had carried out. Accordingly, they asserted that no further money was due to the Claimants.

39. Furthermore, it was the Respondent's position that the Claimants had not worked the hours they had claimed in their time sheets in March 2020, and they did not accept that the sums being claimed by the Claimants were accurate.
40. The bundle contained time sheets for work permits at the Port of Tyne. Mr Hudson stated that some of these permits were not signed by all of the Claimants, and as a result the Respondent did not accept that all of the Claimants had attended the Port of Tyne on the days in question. The Respondent also claimed that Mr Stewart specifically had not attended site on 11 March 2020 however he had submitted a time sheet stating that he had attended for 7.5 hours.
41. The Claimant's evidence was that Mr Murray would usually sign the work permits for the Port of Tyne on behalf of all Claimants, since they usually all arrived together in the same van, and it was not therefore practical for each of them to sign the sheets. Mr Stewart's evidence was that he had been on site on 11 March 2020 and had produced in the bundle a screenshot of his phone in which he had taken a photograph of the waste bin on the Port of Tyne Site, which indicated it had been taken on 11 March 2020. Accordingly, Mr Stewart asserted he has been on site on that day as he had claimed in his time sheets.
42. On 31 March 2020, Mr Murray sent a text message to Mr Dowson explaining that he understood Mr Dowson was suggesting the Claimants had fraudulently entered timesheets for their work on the Port of Tyne job. Mr Dowson replied the same day indicating that he was not insinuating that, but the issue had arisen because the work permits did not accord with the timesheets and he was therefore having an issue with the Port of Tyne over payment.
43. At the end of March 2020, work at the Port of Tyne job had been completed and the UK entered its first national lockdown. The Claimants had submitted invoices to the Respondent for the work they carried out in March 2020, however they had not received payments.
44. The Claimants' evidence was that the Respondent did not pay them for March 2020 and, when they asked about payment, they were informed the Respondent company was closing due to COVID-19, and they should look to sign on for unemployment benefits. By this they understood they were dismissed.
45. On 30 March 2020, Mr Murray sent a text to Mr Dowson requesting information on when wages would be paid. Mr Dowson responded saying he was trying to sort payment and then stated:

"I think [it] would be best for the time [being] if you all signed on you will get February and March back payment."

46. Mr Hudson's evidence was that when the lockdown began, due to his personal health conditions he did not want to run any unnecessary risks. He had been informed by Mr Dowson and Mr Thompson that although they had contracts lined up for works, the implementation of lockdown had interrupted the same and there was no immediate work for the Respondent company and therefore no work for the Claimants to carry out.
47. Mr Thompson's evidence was that he had looked into making claims for the Respondent company employees through the Coronavirus job retention scheme in order to place all employees, including the Claimants, on furlough, however because the Respondent company had not arranged payroll for its employees, the Respondent was unable to do this.
48. Mr Hudson's evidence was that in April 2020 he invited the Claimants to come and work on a further job and they all refused the same. He understood that Mr Thompson and Mr Stewart had set up a company in competition with the Respondent company and would therefore not be returning to work. Accordingly, the Respondent did not accept that the Claimants were dismissed but instead the Claimants had simply resigned without giving notice. Therefore, the Respondent did not accept that the Claimants were due any notice pay.
49. On 1 April 2020, Mr Stewart and Mr Gott sent a Statutory Demand to the Respondent regarding payment of their March invoices.
50. Mr Hudson asserted that this indicated they were not employees as, if they were employees, they would have started Employment Tribunal proceedings and not Civil proceedings. Mr Stewart and Mr Gott gave evidence that they had sent a statutory demand as they had been advised that this was the correct procedure for chasing payment of an invoice. However, they later obtained further advice on their position leading them to believe they were able to bring action in the Employment Tribunal as they were employees.
51. The Claimants confirmed that they had all received payments from the Redundancy Payments Service in respect of their Employment Tribunal claims against JGHS which went into liquidation, which included sums relating to their January 2020 wages.

Relevant Law

Employment status

52. Section 203 of the Employment Rights Act 1996 provides:

“(1) In this Act “employee” means an individual who has entered into or works under a contract of employment.

- (2) *In this Act a “contract of employment” means a contract of service or apprenticeship, whether express or implied and, (if it is expressed) whether oral or in writing.”*

53. The classic description of a contract of employment is set out in the judgment of McKenna J in Ready Mix Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 10 ER 433, QBD in which he stated:

53.1. *“A contract of service exists if three conditions are fulfilled.*

- i. The servant agrees that, in consideration of a wage or other remuneration, he will provide his own working skill in the performance of some service for his master.*
- ii. He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other’s control to a sufficient degree to make that other master.*
- iii. The other provisions of the contract are consistent with its being a contract of service... Freedom to do a job either by one’s own hands or by another’s is inconsistent with a contract of service, though a limited or occasional power of delegation may not be.”*

54. The Supreme Court underlined the continuing relevance of this passage in Autoclenz Ltd v Belcher and Others [2011] ICR 1157, SC, where Lord Clark referred to it as the “*classic description of a contract of employment*”.

55. Following Ready Mixed Concrete the courts have established that there is an ‘irreducible minimum’ without which it will be all but impossible for a contract of employment to exist and it is now widely recognised that this entails three elements:

- 55.1. Control;
- 55.2. Personal Performance; and,
- 55.3. Mutuality of obligation and control.

56. The requirement for control will not be met merely because the putative employer can terminate the contract, something more is required. It is necessary to demonstrate that the employer can, under the contract of employment, direct the employee in what he did (Wright v Aegis Defence Services (BVI) Ltd and ors EAT 0173/17). That is distinct from showing that the employer controls the way that the employee does the work. Even a complete absence of day-to-day control is irrelevant if ultimately the employer retains the contractual power to direct what work should be done (White and Anor v Troutbeck SA 2013 IRLR 949, CA.)

57. In Carmichael v National Power plc 2000 IRLR 43 the House of Lords confirmed that there is an “irreducible minimum” of mutual obligation necessary to create a

contract of employment. Mutuality of obligation is said to be the obligation of the putative employer to provide work and the obligation of the putative employee to accept it. Unless there is mutuality of obligation and a sufficient degree of control, there cannot be a contract of employment.

Unlawful deductions

58. Section 13(1) employment Rights Act 1996 ('ERA') provides:

"13 Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—*
 - a. the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
 - b. the worker has previously signified in writing his agreement or consent to the making of the deduction. that a worker has the right not to suffer unauthorised deductions from wages."*

Dismissal

59. Section 95 of the Employment Rights Act 1996 states:

- (1) For the purposes of this Part an employee is dismissed by his employer if and, subject to subsection (2), only if*
 - (a) the contract under which he is employed is terminated by the employer (whether with or without notice).*

60. If the respondent's words and conduct show it was terminating the contract that will be dismissal under 95(1)(a). Where words and/or are ambiguous, it is neither the subjective intention of the speaker nor the subjective interpretation of the person to whom the words are spoken which is determinative. It is what objectively an onlooker with knowledge of the facts and background would have taken the words to mean as per J&J Stern-v-Simpson 1983 IRLR 52. Essentially the test is an objective one and to determine whether there has been a dismissal or not the Tribunal should consider all the surrounding circumstances (both preceding and following the incident) and should ask how a reasonable employee would have understood those words in the light of those circumstances.

Notice

61. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Act which provides:

"86 Rights of employer and employee to minimum notice.

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

....

(c) is not less than twelve weeks' notice if her period of continuous employment is twelve years or more."

Conclusions

62. Based on the findings of fact above and considering the relevant law as it applies to the agreed issues I conclude as follows:

Employment status

63. In the absence of any written agreement, I needed to consider the reality of the arrangements between the parties based on the evidence that I had heard.

64. I found that the Claimants were employees of the Respondent company. The Respondent accepted that the Claimants had all been employees with JGHS. Further to the Claimants' transition from JGHS to the Respondent company, very little of their actual day-to-day work changed; they even continued to submit time sheets using the JGHS headed weekly time record sheets. The Respondent controlled where the Claimants would work and sent them to carry out works at the Port of Tyne. Had the Respondent informed the Claimants they were required at a different site, the Claimants would have attended at another site as directed. The Claimants were not permitted to refuse to attend a job or any specific part of it, or to send someone in their place to carry out the works. The Claimants did not set their hourly rate or have any control over their level of remuneration. Mr Dowson maintained the same level of control over the Claimants' work whilst they were employed with the Respondent as he did whilst they were employed with JGHS. Accordingly, the 'irreducible elements' of control, personal performance, and mutuality of obligation that are required for a contract of employment to exist were apparent in the relationship between the parties.

65. Furthermore, the evidence from Mr Hudson and Mr Dowson was that Mr Thompson was responsible for this aspect of the business. Mr Thompson's evidence confirmed that it had always been the Respondent's intention to engage all employees who moved to the Respondent company from JGHS on the same terms as their previous engagement with JGHS as employees.

66. I found little persuasion in the argument that submitting invoices was evidence that the Claimants had agreed to work as self-employed contractors. On the balance of probabilities, it seems more likely that the only reason for the use of invoices was to work around the delay in the arrangement of the payroll system for the Respondent company. I was not persuaded by the similar argument that because Mr Murray and Mr Stewart had submitted Statutory Demands they must have been

acting as self-employed contractors. I found that it was much more likely that submitting a Statutory Demand demonstrated Mr Murray and Mr Stewart's confusion as to which action they should take in their attempt to recover their March wages (as was their evidence) rather than this providing any evidence that the parties had agreed the Claimants were self-employed contractors. Furthermore, the parties' subjective understanding of the Claimants' employment status was not wholly determinative of issue; as I had explained to the parties, the legal test looks at the practical reality of the situation.

67. The practical reality of the situation was that the Claimants were employees of the Respondent company and that had always been the Respondent's intention. It appears that the Respondent had arrived at the conclusion that the Claimants were self-employed because Mr Hudson and Mr Dowson had believed that it was not possible for a company to have employees if a payroll system was not in place, and Mr Dowson fairly conceded this to be the case in his oral evidence.
68. The Claimants therefore became employees for the Respondent company at the start of February 2020 and their employment was terminated at the end of March 2020. As I had found the Claimants were employees, the Tribunal did have jurisdiction to hear their claims for unlawful deduction from wages and wrongful dismissal.

Unlawful deduction from wages

69. The Respondent conceded that there were no written agreements between the parties in which the Claimants had confirmed their prior agreement to any deductions being taken from their wages.
70. I found that the payments made to the Claimants in early to mid-February were not advances on their salaries, as asserted by the Respondent. The payments were loans for the Claimants' JGHS January 2020 wages. The parties had reached an agreement that the Respondent would loan the Claimants their January 2020 JGHS wages and this sum would be repayable to the Respondent once the Claimants had received remuneration in relation to their Employment Tribunal claim against JGHS.
71. The documentary evidence was more clearly aligned with the Claimants' position on this issue.
 - 71.1. The Respondent paid each Claimant the exact amount of money due from their JGHS January 2020 wages in two tranches in early to mid-February 2020. It find it very unlikely that the Respondent would make staged advance payments of wages in sums that happened to match each of the Claimants' JGHS January 2020 wages;
 - 71.2. The plain reading of Mr Dowson's email to Mr Stewart on 20 April 2020, stating "*we loaned you £1,500 for January*" was that the Respondent had loaned sums to the Claimants for their January 2020 wages.

- 71.3. The transaction reference on Mr Stewart's bank transfer for 3 March 2020, read "*Part Feb Salary*" indicating that the payments in March related to February wages. Had advanced payments been made, payments in early March would not have related to February;
- 71.4. The text messages between Mr Murray and Mr Dowson confirm the Respondent would loan the Claimants their JGHS January 2020 wages.
72. I did not accept the evidence given from Mr Murray and Mr Stewart during the course of the hearing that the Respondent had confirmed at some unspecified point in time that the loan of the January 2020 wages did not need to be paid back, as this was not supported by the evidence available and this represented a departure from the position as stated in the ET1s and also Mr Stewart's email to the Tribunal of 6 October 2020.
73. I also did not accept the Respondent's assertion that the Claimants had falsified their time sheets and accordingly an element of the sums claimed from the Claimants were not due to them. The evidence the Respondent relied upon was the work permits for the Port of Tyne, which were not signed by each of the Claimants for every day they had claimed they were on site. The Respondent was unable to confirm by exactly how much it believed each of the Claimants had fraudulently increased their hours on the work permits or the amount it asserted each Claimant had overclaimed.
74. Having reviewed the General work permits in the bundle I noted that from 10 – 14 and 17 – 22 February 2020, only Mr Murray had signed them. The Respondent did not however suggest that only Mr Murray was in attendance for this two-week period in early February. I found it unlikely that the Respondent would not have noticed if only one of the Claimants was in attendance for a two-week period on a job that was incredibly important and which all parties agreed had an extremely tight timeframe. The Claimants' explanation is satisfactory on this point and I accepted that it was likely that where a group of employees from one company arrived at the site together, often it would be the case that only one person in each vehicle, or one person for the group, would sign on behalf of everyone.
75. The only specific date the Respondent alleged Mr Stewart was not on site was rebutted by the screenshot from Mr Stewart's phone in the bundle which indicated that he had taken a photograph on site on the day in question. Whilst the Respondent asserted this could have meant he had attended for only one hour, this assertion was not supported by any further evidence and all Claimants confirmed in their evidence that they had each attended site on the days they had specified.
76. I found therefore that the total sums claimed by the Claimants represented the wages properly due to them for the time they had spent working for the Respondent.
77. Having reviewed all the evidence and arguments on this issue I found that the payments made to the Claimants in early to mid-February were sums loaned from the Respondent for the unpaid JGHS January 2020 wages, which were due to be

repaid to the Respondent once the Claimants had received payment of the same. The Claimants have received payment from the Redundancy Payments Service which covers the JGHS January 2020 wages, but they had not repaid these sums to the Respondent at the date of the hearing. As the Respondent's position was that the Claimants were not employees and that the Tribunal did not have jurisdiction to hear their claims, the Respondent had not made a counter-claim against the Claimants for these sums.

78. I found then that the payments the Respondent company made to the Claimants in March 2020, represented their salaries from February 2020. This was supported by the fact that the sum of payments made to the Claimants matched the amounts claimed in each of their February 2020 invoices. Furthermore, Mr Stewart's bank transaction reference for the first of those payments on 3 March 2020 stated: "*Part Feb Salary*".
79. Consequently, whilst payments were made to the Claimants in respect of their February 2020 invoices, no payments were made to them in respect of the invoices each of them had submitted for their work in March 2020. The Claimants did not sign any documentation indicating that they had agreed to a deduction from their wages.
80. I found then that each of the Claimants was not paid their wages for March 2020. There was no lawful reason for the Respondent to withhold this payment and the Claimants' claim of unlawful deduction of wages succeeds. The Claimants are entitled to:
- 80.1. Mr Stewart: the gross sum of £1,948;
 - 80.2. Mr Murray: the gross sum of £2,389.50;
 - 80.3. Mr Gott: the gross sum of £2,389.50

Wrongful dismissal

81. I found that the Claimants had been dismissed by the Respondent. The Respondent's words to the Claimants that they should look to "sign on" for unemployment benefits could be considered ambiguous. However, I found that when read in conjunction with the relevant background circumstances, which include the global pandemic and lockdown leading to mass disruption for the whole economy, confirmation from the Respondent that there was no work available to the Claimant, the fact that the Respondent was a company in its infancy and would potentially not survive the economic disruption caused by the pandemic, and that the Respondent had failed to pay their March 2020 wages, viewed objectively, these words would indicate to a reasonable employee that they had been dismissed.
82. Accordingly, in breach of contract, the Claimants were dismissed without notice in circumstances where the Respondent has failed to demonstrate that it was entitled to so dismiss them.
83. The Claimants were entitled to receive statutory notice. Each of the Claimants was employed with the Respondent company for over one month. Under section 86 of

the Employment Rights Act 1996, employees employed for over one month are entitled to receive one weeks' notice and are therefore entitled to the following:

- 83.1.1. Mr Stewart: the net sum of £460
- 83.1.2. Mr Murray: the net sum of £540
- 83.1.3. Mr Gott: the net sum of £540

Summary

84. The Respondent shall pay the following sums to the Claimants:

84.1. In respect of Notice pay:

- 84.1.1. Mr Stewart: the net sum of £460
- 84.1.2. Mr Murray: the net sum of £540
- 84.1.3. Mr Gott: the net sum of £540

84.2. In respect of unlawful deduction of wages:

- 84.2.1. Mr Stewart: the gross sum of **£1,948**;
- 84.2.2. Mr Murray: the gross sum of **£2,389.50**; and,
- 84.2.3. Mr Gott the gross sum of **£2,389.50**.

Employment Judge Newburn
26 September 2021

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