



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102076/2020 (A)

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Held via telephone conference call on 15 July 2020

Employment Judge L Wiseman

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Mr E Martin

Claimant

**Represented by:
Ms D Alexander -
Solicitor**

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Purplebricks Group plc

Respondent

**No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The tribunal decided the claimant was a “worker” and entitled to pursue the claim.

The tribunal ordered the respondent to pay to the claimant the sum of £30,284 (being holiday pay of £18,449; unauthorised deduction of wages of £2950 and pension contributions of £8885).

REASONS

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1. The claimant presented a claim to the Employment Tribunal on the 7 April 2020 seeking payment of outstanding wages, holiday pay and pension contributions.

2. The respondent did not enter a response to the claim.

3. An Employment Judge decided not to issue a Rule 21 judgment because further information was required regarding the employment status of the claimant and the calculation of the sums said to be due.
4. The hearing today was a final hearing which took place by telephone. The claimant and his representative were present on the conference call and had provided a number of documents in advance of the hearing. The respondent was not present.
5. I heard evidence from the claimant whom I found to be a credible witness. I made the following material findings of fact.

10 **Correct designation of the respondent**

6. Ms Alexander clarified that the correct designation for the respondent is Purplebricks Group pic. I confirmed this had been accepted.

Findings of fact

7. The claimant started work with the respondent on the 1 March 2016. He worked as a Local Property Expert (an estate agent).
8. The claimant was required, upon starting work with the respondent, to set up a company (New Chapter Ltd). New Chapter Ltd entered into a Licence Agreement with New Broom Ltd (Purplebricks is the trading name of this company) (page 18).
9. The claimant was required to attend a two week compulsory training course in March 2016 at which the respondent's "12 steps pitch" was tutored. The respondent insisted this pitch be given to every client in the format in which it was tutored.
10. The claimant was also given a pre-call script to follow, familiarisation with the computerised system, familiarisation with the Metropix system used for floorplans and the way in which the respondent wanted adverts to be done.
11. The claimant was given a laptop, a camera and a tool for doing laser measurements.

12. The respondent monitored the claimant's pitch to clients and his adverts to ensure the respondent's standards were being followed. The claimant was advised if his adverts required to be amended and he would be given 24 hours to make necessary amendments if required.
- 5 13. The claimant was also required to have a specifically scripted out-of-office message and voicemail message (pages 46 and 48).
14. The claimant was required to provide personal service. A Purplebricks approved viewing agent could be sent to do a viewing if the claimant was incapacitated.
- 10 15. The claimant was required at all times to carry out the role in the manner prescribed by the respondent.
16. The claimant invoiced the respondent each month showing sums due in respect of the work he had done. There was a fixed estate agency fee of £999. Clients could opt to add on a viewing package and/or a home report package for additional cost.
- 15 17. The respondent would make a gross payment to the claimant each month. The respondent would indicate a new sum payable, plus a sum in respect of VAT to give a final gross figure. The VAT was the amount the claimant had to pay to HMRC.
- 20 18. The respondent made deductions from the sums due to be paid to the claimant in respect of complaints made by clients or fine imposed, for example, for time limits missed. A schedule of loss was produced, attached to which were amended invoices showing deductions made by the respondent in respect of various properties where, it was said, complaints had been made or time limits not met. The respondent also deducted money for compulsory training costs and fines.
- 25 19. The unauthorised deductions which the claimant sought to recover involved deductions made by the respondent in respect of complaints or fines with which the claimant did not agree or accept.

20. The claimant, throughout the period he worked for the respondent, did not receive payment of holiday pay.
21. The claimant was not enrolled in the auto-enrolment pension scheme.

5 **Submissions**

22. Ms Alexander submitted the claimant required to demonstrate he was a worker in terms of section 230(3) Employment Rights Act, Regulation 2 Working Time Regulations and section 2 Pension Act in order to bring the claim. Ms Alexander invited the tribunal to find the claimant had given clear, cogent evidence during which he had explained the working practices insisted upon by the respondent.
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23. Section 230(3)(b) Employment Rights Act provides that “worker” means an individual who has entered into or worked under any other contract, whether express or implied, 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.
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24. Ms Alexander referred to the Licence Agreement, and submitted the Agreement contained all of the terms one would expect to see in a contract of employment. The claimant was required to give personal service, there was a clear intention the claimant would be paid for his services, there was control over the way in which the claimant performed the role and the claimant was not in business on his own account.
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25. Ms Alexander referred the tribunal to page 93 of the productions regarding the issue of personal service. This was an example of the claimant being taken to task for sending someone else to photograph a property.
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26. Ms Alexander referred to the **Pimlico Plumbers** and **Uber** cases as recent authorities regarding the issue of worker status.

27. The true relationship between the parties was between the claimant and the respondent, and not the claimant's personal services company and the respondent. Ms Alexander referred the tribunal to the case of **Catamaran Cruises v William**.
- 5 28. The claimant was not in business on his own account. The claimant was an integral part of the respondent's business. He had been required to attend intensive training and to use the respondent's sales pitch and systems. The claimant was given a task list and a time limit for completion of those tasks. He had no autonomy regarding fees. The respondent scrutinised the
10 claimant's adverts to ensure compliance with their standard; they supervised the claimant to ensure scripts and the pitch were followed and the out-of-office and voicemail messages were standard. The respondent also dealt with all complaints centrally. The claimant's vehicle had to be kept to the standard required by the respondent
- 15 29. Ms Alexander submitted the reality was that the Licence Agreement sought to mask the true relationship between the claimant and the respondent which was one of the claimant being a worker.
30. Ms Alexander referred to the schedule of loss which had been produced. The deductions in respect of fines which had been made, and with which the
20 claimant did not agree, were as listed on the schedule and amounted to £2950.
31. The claimant had not been paid any holiday pay during the course of working for the respondent. The period claimed was limited to two years. Ms Alexander noted the sum shown on the schedule of loss was incorrect and
25 the correct figure was two years' holiday pay of £18,449.48 based on average weekly remuneration.
32. The claimant also sought pension contributions of £8884.78.
33. The total claimed by the claimant was £30,284.26.

Discussion and Decision

34. The issue for this tribunal to determine is whether the claimant was a worker of the respondent. The term "worker" is defined in section 230(3) Employment Rights Act which provides that *"In this Act, "worker" means an individual who has entered into or works under a contract of employment or any other contract, whether express or implied and 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"*.
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35. I noted the Working Time Regulations and Pensions Act contained the same definition of worker.
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36. I had regard to the cases to which I was referred by Ms Alexander, namely **Uber BV v Aslam and others 2018 EWCA Civ 2748** and **Pimlico Plumbers 2018 IRLR**. The first case concerned a person working in the gig economy and the latter a "self employed" plumber. The claimants were successful in both cases where the higher Courts confirmed the factors of personal service, substitution, control and payments were key features to consider when determining employment status.
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37. I was also referred to the case of **Catamaran Cruises v Williams 1994 IRLR 384** where the EAT held that the fact the worker had formed a limited company and supplied his services through that company did not affect his employment status.
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38. The claimant in this case was required to set up his own company which entered into a Licence Agreement (page 19) with New Broom Ltd, the trading name of which is Purplebricks. The Agreement was essentially a licence to use the respondent's software for the purposes of carrying on business.
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39. I was satisfied, having had regard to the **Catamaran Cruises** case (above) that the fact of the claimant having formed a limited company through which to supply his services, did not of itself prevent the claimant from being a worker. I am required to consider the reality of the situation which governed the relationship.
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40. I accepted the claimant's evidence that he was under the control of the respondent in terms of the business he did and, more particularly, how he did it. The claimant told me the focus of the two week initial training was "the 12 steps of the pitch", that is, the pitch to be given to every client in the way that it had been taught. In addition to this the claimant was also provided with a standard voicemail message and pre-call script.
41. The claimant's adverts had to follow a standard design in terms of layout, description of the property, picture and floor plans.
42. The above points were all monitored and the claimant was informed of any errors and given a period of time in which to rectify them.
43. The claimant was also provided with equipment (a camera, laptop and measuring laser) to enable him to carry out his duties.
44. The claimant was not permitted to send a substitute to carry out valuations or viewings, except if the claimant was incapacitated, in which circumstance a person fully trained by the respondent would be permitted to attend. The claimant's evidence on this point was supported by the Licence Agreement.
45. The claimant was required to charge the fixed fees set by the respondent. The claimant submitted an invoice to the respondent each month showing the fixed fee/s in respect of each property. The respondent paid invoices on the basis of fixed fees less any deductions for complaints, refunds, time limits not met or fines. The claimant was paid a gross amount and had to account to HMRC for the amount shown as VAT.
46. I concluded, having had regard to the claimant's evidence, that the claimant was not in business on his own account. I reached that conclusion having had regard to the fact the claimant was an integral part of the respondent's business; he was given intensive training regarding the sales pitch to be given to each client, and also in use of the respondent's systems; he was given a task list and time limits in which to complete those tasks; he had no autonomy regarding fees; there was a high degree of supervision by the respondent and

complaints regarding the claimant were dealt with centrally by the respondent and could result in deductions or fines.

47. I decided the claimant was a worker in terms of section 230(3) Employment Rights Act (and the Working Time Regulations and Pensions Act). I reached that decision based on the factors referred to in the above paragraph, and including the fact the claimant was required to give personal service and could not send a substitute to carry out his duties.
48. The claimant brought a claim in respect of holiday pay. I accepted the claimant had not been paid any holiday pay during his period of working for the respondent. The claim for holiday pay is limited to two years. I found this claim well founded and I order the respondent to pay to the claimant the sum of £18,449 in respect of holiday pay.
49. The claimant suffered an unauthorised deduction of wages in respect of the schedule of fines which were deducted from his pay in circumstances where he did not agree with the basis of the fine. I found this claim to be well founded and I order the respondent to pay to the claimant the sum of £2950.
50. The claimant was not auto-enrolled in the pension scheme. He is entitled to the pension contributions which ought to have been paid into that scheme on his behalf. I order the respondent to pay to the claimant the sum of £8885.
51. I, in conclusion, found the claimant was employed by the respondent as a worker and accordingly is entitled to pursue the claims set out in the claim form. I order the respondent to pay to the claimant the sum of £18,449 in respect of holiday pay; £2950 in respect of an unauthorised deduction from wages and £8885 in respect of pension contributions. This is a total sum of £30,284.

Employment Judge: Lucy Wiseman
Date of Judgment: 30 July 2020
Entered in register: 30 July 2020
and copied to parties

