



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Trych

**Respondent:** Premier Commercial Cleaning Services Ltd

**HELD:** by Cloud Video Platform (CVP)

**ON:** 14 June 2022

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** Ms A Skelton, a lay representative

**Respondent:** Mr S Messruther, Director

(Mr S Messruther did not appear when Judgment was given )

## JUDGMENT

The Tribunal gave Judgment as follows:

1. The claimant's claim for unauthorised deduction of wages is hereby dismissed.

## REASONS

### 1. Claim

Unauthorised deduction of wages.

### 2. Issues

- 2.1. Whether the claimant was an employee of the respondent.
- 2.2. If so, whether the claimant is owed £115.00 in wages.
- 2.3. If not, the question of whether the claimant is owed wages does not arise.

### 3. The law

The Tribunal has to have regard to section 13(1) Employment Rights Act 1996 which provides that an employer shall not make a deduction from wages of a worker **employed** by him.

4. **Matters occurring during the hearing**

- 4.1. This being a CVP was a video hearing and the claimant appeared on an iPhone in a private room at York Crown Court, accompanied by her partner.
- 4.2. The claimant's first language was not the English language but was believed to be Polish. She had not requested an interpreter but said that she could speak and understand English.
- 4.3. Unfortunately during the hearing the Tribunal noticed that the claimant had disappeared from the video and the Tribunal asked Ms Skelton to try to make contact with the claimant. Ms Skelton found the claimant, apparently in a taxi, but did not apparently discuss the case with the claimant in a manner that would have assisted the Tribunal, having regard to the evidence given by then, namely, that the claim related to 13-16 December 2021 and the respondent did not start trading until 25 April 2022.
- 4.4. The claimant was never seen or heard from again until the giving of this Judgment, when she did appear, which was approximately two and one half hours later. Fortunately, when the claimant disappeared from the substantive hearing the claimant had given her evidence. The case itself, though listed for 2 hours, took approximately five and one half hours to final decision, ending at 7.24pm.

5. **Facts ,**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities).

- 5.1. The claimant maintained she was employed as a cleaning assistant by the respondent from 13 to 16 December 2021, when it would appear that she said she resigned owing to ill health.
- 5.2. The claimant came to the Tribunal because she was never paid for her work, which she said was at Eastfield Medical Centre and the amount allegedly owing was £115.00.
- 5.3. The claimant says she obtained the name of the respondent from Facebook. She said she was interviewed in Falsgrove Street Scarborough, but there was no such address and she said she did not know the name of the interviewer.
- 5.4. In cross-examination Mr Messruther, a director of the respondent, put it to the claimant that the respondent did not start to trade until 25 April 2022, some four months after the claimant alleged that she was employed by the respondent. The Tribunal finds that the respondent did not trade until 25 April 2022 as a fact.
- 5.5. The claimant may have been confused in December 2021 because Mr Messruther ran another company called Premier Cleaning Contractors Limited (**Contractors**). Contractors was a national operating cleaning business but only cleaned pubs (and therefore not medical centres).

- 5.6. On 25 April 2022 Contractors was acquired by the respondent, which as the Tribunal has found had not traded until then, although it was formed on 8 March 2020. On 25 April 2022 the respondent also acquired two further businesses, one in Scotland and one in Wales.
- 5.7. It was part of the claimant's case that a Mr Richard Lancaster was to meet the claimant at Eastfield Medical Centre at the beginning of her job, but we find that Mr Lancaster was not an employee of Contractors or the respondent. The claimant also corresponded with a man called McKann, allegedly an employee of Contractors or the respondent, but there was no such person employed by either of them.
- 5.8. The fact is that in her claim form, presented on 5 April 2022, the claimant named the respondent, Premier Commercial Cleaning Services Ltd as her employer, the respondent also being a pub cleaning company. Ms Skelton in her submissions stated that in so naming the respondent the claimant had made a genuine mistake when the claimant named the wrong company.

## **6. Determination of the issues**

After listening to the factual and legal submissions made by and on behalf of the respective parties:

- 6.1. The evidence shows that the respondent was not trading when the claimant was working on 13 to 16 December 2021.
- 6.2. If a deduction from wages was made it could not possibly have been made by the respondent and it was the claimant who chose the respondent as being the business that carried out the deduction and indeed the business that employed her.
- 6.3. That being so we do not need to consider evidence other than the fact that the respondent was not trading at the relevant time.
- 6.4. It should also be said that if a party A makes a claim against another party B, the claim is against that party B and not any other party. The law does not provide if party B is chosen in error, that party A can go searching for other parties such as C, D or E, unless they were joined by party A in the first place or by way of amendment, neither of which is the case here. This is irrespective of honest mistake or other reason short of say fraud or dishonesty. Here the claimant made the choice of the respondent as her employer and no other body and unfortunately she must take the consequences. Those consequences are that she has no rights against the respondent.
- 6.5. In all the circumstances the claimant's claim of unauthorised deduction of wages is dismissed.

- 6.6. It is possible that if the respondent had been more explicit in its response as to why it was not possible for the claimant to have been employed by the respondent it might have saved the need for this case to go to the final hearing.

Employment Judge Shulman

Date 15 June 2022

JUDGMENT SENT TO THE PARTIES ON  
17 June 2022