



# EMPLOYMENT TRIBUNALS

**Claimant:** Alex Limozi

**Respondent:** Kynate Logistics Solutions Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford

**On:** 13 June 2022, 9 January  
2023 and 28 & 29 March 2023

**Before:** First-tier Tribunal Judge Coutts  
Sitting as an Employment Judge

### Appearances

For the claimant: Ms Mary Kimani

For the respondent: Ms Jade Letts

## RESERVED JUDGMENT

The respondent has made an unlawful deduction from the claimant's wages and is ordered to pay to the claimant the gross sum of £3,972.05 in respect of the amount unlawfully deducted.

## REASONS

### The Background

1. The claimant initiated an early conciliation process against the respondent with ACAS on 15 January 2021. That process concluded and ACAS issued a certificate to that effect on 26 February 2021.
2. The claimant then made a claim to this tribunal by way of ET1 together with grounds of complaint and in due course a response by way of ET3 was received from the respondent disclosing grounds of resistance to the claim.

### **The Hearing**

3. The hearing dates were virtual ones by way of CVP and there were no objections to this format being used.
4. In his ET1, the claimant disclosed that he was dyslexic and that he would need more time during the hearing to process information.
5. I decided that it was appropriate for adjustments to be made to assist the claimant and directed that he could take breaks where needed and further, that his mother, Ms Mary Kimani, would be able to assist him with documents at the hearing and to present his case.
6. At the hearing, I heard oral evidence in English from Mr Alex Limozi, the claimant, and also from Mr Ben Njoroge, on behalf of the respondent. I have had careful regard to their oral evidence in its entirety together with all of the submitted documentation.
7. I shall note here that I have read and considered all the papers before me. Where I have been guided to certain passages by a representative, I have read those passages with especial care; however, I have read them in the context of the entire document.
8. I also heard oral submissions from both parties and at the conclusion of the last hearing day, on 29 March 2023, I reserved my decision which I now give in writing with reasons.

### **The Claimant's Case**

9. The claimant's case can be found in his witness statements, his oral evidence and the documents produced. It can be summarised as follows:
10. He started working for the respondent as a delivery driver on 1 December 2019. He signed an agreement entitled a subcontractors agreement ("the agreement").
11. The respondent is a logistical supply company providing delivery services to DHL.
12. The agreement stated the claimant's working status to be a self-employed contractor who was responsible for his own tax and national insurance contributions.
13. The claimant says that the agreement does not accurately reflect the working relationship he had with the respondent which the claimant believes is that of a worker.
14. He asserts that the respondent exercised a considerable amount of control over their working relationship as follows:

- i) The claimant was provided with a vehicle to carry out his work for the respondent;
  - ii) The respondent was responsible for paying all insurance for using the vehicle;
  - iii) The claimant was required to wear a DHL uniform;
  - iv) A goods scanner was provided for the purpose of collecting data from the deliveries and collections carried out by the claimant;
  - v) The respondent provided the claimant with instructions on his schedule for each day, week and month he was working for them;
  - vi) The claimant was provided with the work and a delivery round that was determined by the respondent;
  - vii) The claimant was required to undertake work for the respondent personally and there was no genuine right of substitution;
  - viii) The respondent was responsible for the preparation of payslips and the payment to the claimant.
15. The working relationship between them was terminated by the respondent in a letter dated 12 January 2021 which gave the claimant 30 days notice as required under the agreement. The claimants last day of working was the 11 February 2021.
16. The claimant particularised his claim in his evidence and also in an updated schedule of loss prepared for the final two days hearing.
- i) Vehicle & Other Costs in the total sum of £892.05 particularised as follows:
    - (a) Lens Panel and Wing Mirror charges - £220.00;
    - (b) Slum lock - £160.00;
    - (c) Door card - £102.00;
    - (d) Fuel reimbursement - £19.99;
    - (e) Parking charges - £100.00;
    - (f) Uniform - £18.00;
    - (g) Parcel claim - £52.06;
    - (h) Side mirror - £140.00;
    - (i) Rear light lens - £80.00.
  - ii) Holiday Pay - £3,080.00.
  - iii) Deductions From Wages - £2,906.00.
  - iv) Legal Fees - £3,660.00.

### **The Respondent's Case**

17. The respondent says that the claimant worked for them as a self-employed contractor and that he was not a worker.
18. The vehicle and other costs were property deducted by them under the agreement as matters the claimant was liable for in the course of his work.
19. If the tribunal finds the claimant to be a worker the respondent accepts the holiday pay claim made by the claimant in the sum of £3,080.00.

20. The respondent has made no unlawful deductions from wages and the claimant has failed to establish any deductions from the evidence produced.
21. The respondent disputes that the claimant is entitled to make a claim for legal fees. It is open to the tribunal to consider a costs order; however, the circumstances here do not warrant one being made against the respondent.

### **The Issues**

22. Was the claimant self-employed or a worker?
23. If so, what were the deductions in respect of his wages and holiday pay?

### **The Law**

24. I was referred to and have considered, amongst other things, the following: **sections 13, 27 & 230 of the Employment Rights Act 1996** and **Pimlico Plumbers Ltd v Smith 2018 ICR 1511**.

### **The Burden and Standard of Proof**

25. It is for the claimant to discharge the burden of proof and the standard of proof to be applied is the balance of probabilities.

### **Findings and Reasons**

26. Self-Employed or Worker Status
27. The agreement between claimant and respondent labels their working relationship as one where the claimant is described as self-employed and responsible for his own tax and national insurance contributions.
28. However, to determine the true nature of their working relationship it is necessary to look at things in the round.
29. The claimant was provided with a vehicle by respondent, a uniform, used a scanner provided by them for deliveries and collections and was given instructions as to how to carry out his working schedule.
30. He was also required to carry out the duties for the respondent personally and whilst there was the opportunity to substitute someone else to perform his work this was not unfettered and required approval by the respondent and also DHL. In any event, it was never used by the claimant.
31. Moreover, the agreement between the claimant and respondent stated that if the claimant was unable to work on a particular day that he had to give the respondent as much notice as possible in order for his work to be covered. This adds further weight to the conclusion that the claimant was required to carry out work personally for the respondent.

32. It follows therefore that I find that the claimant's status was that of a worker and not self-employed.
33. Vehicle & Other Costs
34. The evidence suggests that the relationship between the claimant and respondent had broken down which, in due course, was a factor in the respondent giving the claimant notice under the agreement.
35. I do not go into detail here but a contributory factor in this breakdown was the claimant's use of the respondent's vehicle which had led to a number of losses being incurred by the respondent which they then sought to recoup from the claimant through the wages they paid to him.
36. It is understandable that the respondent would seek to offset their losses and other costs, such as uniform and door card, but, in doing so, it must be lawful.
37. Whilst the agreement between the claimant and respondent talks of a responsibility being placed upon the claimant regarding the use of the respondent's vehicle; it does not state that losses or costs occasioned which may be attributable to the claimant are recoverable from him by a deduction through his wages. The same is applicable to the other costs the respondent deducted.
38. I am therefore satisfied that the claimant suffered an unlawful deduction from his wages in the sum of £892.05.
39. Holiday Pay
40. Having found that the claimant was a worker and, taking into account the concession made by the respondent, I am satisfied the claimant is owed holiday pay as wages in the sum of £3,080.00.
41. Deductions from Wages
42. The claimant claims that the respondent made unlawful deductions from his wages in the sum of £2,906.00.
43. He claims this sum arises as a result of discrepancies between the actual deliveries and collections he made for the respondent and deliveries and collections that he was paid for.
44. A considerable amount of tribunal time was spent on this issue; mainly, in allowing the claimant further time to prepare his case so he could analyse the delivery and collection data received from the respondent which had come from DHL in global pdf documents for both deliveries and collections. These pdf documents were not categorised in respect of the claimant solely but related to a whole period of time and in respect of all of the drivers working for the respondent during that time.

45. At my suggestion, Ms Letts, for the respondent assisted the claimant with parts of the global documents by breaking them down into smaller documents of various months or periods of time.
46. Notwithstanding this the claimant was unable to refer me to the relevant parts of the collections and deliveries data in the global pdf documents, or the smaller parts thereof, that supported his contention that there had been deductions from his wages as claimed.
47. Accordingly, I find that the claimant has not established from the evidence that deductions in the sum of £2,906.00 were properly payable by the respondent.
48. Legal Fees
49. The claimant within these proceedings makes a claim against the respondent for the cost of legal services received from his solicitors in the sum of £3,660.00.
50. Whilst the tribunal does have the power to make an award of costs this is in limited circumstances only and it is usual for each party to pay its own legal costs.
51. The claimant argues that the respondent has delayed in providing documents within the tribunal proceedings which has made it more difficult to prepare his case and that a costs penalty should follow.
52. The majority of the legal services incurred by the claimant relate to legal advice and the issuing of tribunal proceedings on his behalf. At the hearings, the claimant has always represented himself with the assistance of Ms Kimani, his mother.
53. There was a delay by the respondent in producing the delivery and collection data from the scanner used by the claimant but this has been available since the hearing on 9 January 2023.
54. It would have been helpful if this data had been provided earlier but I have no reason to doubt the respondent's explanation that there had been a delay in retrieving this from DHL who were holding the data from the scanner.
55. Having said that, the respondent has acted promptly once that data was to hand and has been helpful to the claimant and the tribunal regarding the dissemination of that data.
56. In the circumstances, I find that it is not appropriate to make a cost order against the respondent.

**First-tier Tribunal Judge Coutts  
(Sitting as an Employment Judge)**

Date: 12 May 2023

Reserved judgment and reasons sent  
to the parties on:

GDJ

For the Tribunal:

12.5.2023