



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Ahmed

**Respondent:** nybble.co.uk Ltd

**Heard at:** Manchester (by CVP) **On:** 3 October 2023

**Before:** Employment Judge McDonald

## Representation

**Claimant:** Not in attendance and not represented

**Respondent:** Mr R Gupta (Managing Director)

# JUDGMENT

The claimant's claim that the respondent made unauthorised deductions from his wages is dismissed under Rule 47 of the Employment Tribunal Rules of Procedure 2013. He did not attend and was not represented at this final hearing.

# REASONS

1. This was the final hearing of this claim. I gave oral judgment dismissing the claim and Mr Gupta requested my reasons in writing.

2. The claimant lodged an Employment Tribunal claim on 26 March 2023 following Early Conciliation from 22 January to 5 March 2023. His claim form says that he worked for the respondent from 15 September 2022 as a "Softwear Operator" working 40 hours a week.

3. The claimant's claim form makes it clear he is claiming for arrears of wages for 3 months. The other information in it is not very clear. It says that he worked for the respondent for 3 months but received no pay. He names Greg Jackson as his manager. He says that the respondent "changed managerial fronts in all departments" and this "resulted to 0 contract hours" because his manager (presumably Mr Jackson) resigned from the company. The total amount claimed is 3 months' pay averaging £2,200 per month.

4. The respondent's case is that the claimant was never employed by it. It also says it has never employed anyone called Greg Jackson.

5. The claimant's claim form named Asif Ahmed as his representative. The postal address is the same as the claimant's postal address. No email address was given for Asif Ahmed but a mobile number was.

6. By a notice of hearing dated 7 June 2023 the parties were notified that the final hearing of the claim would take place today, 3 October 2023 at 14.15 by CVP video hearing.

7. Mr Gupta, the respondent's Managing Director, attended the hearing on its behalf. Neither the claimant nor his representative had joined the hearing by 14.15.

8. The Tribunal attempted to contact the claimant and his representative by phone but could not get through on the telephone numbers provided for them on the claim form. Neither the claimant nor his representative had joined the hearing by 14.30.

9. Rule 47 of the Employment Tribunals Rules of Procedure 2013 permits a Tribunal to dismiss a claim or proceed with a hearing in the absence of a party if a party fails to attend or be represented at a hearing. Before doing so, the Tribunal is required to consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

10. The Tribunal had no information about why the claimant did not attend and was not represented at the hearing. I therefore considered whether it was in the interests of justice to dismiss the claim or proceed in the claimant's absence.

11. In relation to a claim for deduction from wages, s.13(1) of the Employment Rights Act 1996 ("ERA") says:

**"(1) An employer shall not make a deduction from the wages of a worker employed by him unless-**

**(a) the deduction is required or authorised to be made by virtue of a statutory provision of 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."**

12. S.27(1) of ERA says:

**"(1) In this Part 'wages', in relation to a worker, means any sums payable to the worker in connection with his employment, including-**

**(a) Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise"**

13. S.13(3) of ERA says:

**"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."**

14. That means that for the claim of unauthorised deductions to succeed the claimant must first satisfy the Tribunal that he was a worker of the respondent's.

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The respondent disputes that he is or ever was a worker. It has produced evidence from its payroll and HR providers to corroborate that along with a witness statement from Mr Gupta. That evidence also corroborates the respondent's case that it has never employed the manager referred to, Greg Jackson.

15. Given that dispute about whether the claimant was a "worker" I decided the case was not one where I could uphold the claimant's claim based solely on the documents before me. In the absence of any evidence from him, I cannot be satisfied he was ever a worker of the respondent's. I decided instead that it was in the interests of justice for me to dismiss his claim.

16. In the circumstances the claimant's claim is dismissed under rule 47 due to the claimant's non-attendance at this hearing. It is open to the claimant to apply for reconsideration of this Judgment within 14 days of the date the Judgment is sent to the parties if there is some reason why it is necessary in the interests of justice for the Judgment to be reconsidered.

—  
Employment Judge McDonald  
Date 3 October 2023

JUDGMENT SENT TO THE PARTIES ON  
10 October 2023

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