



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss Sarah Ball

AND

Respondent

Mr Scott Belsom trading as SJS Security

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY
By Video (CVP)

ON

18 December 2023

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: In person, assisted by his partner Dawn

RESERVED JUDGMENT

The judgment of the tribunal is that the respondent's application for reconsideration of the Judgment dated 4 August 2023 is refused, and that Judgment is confirmed.

REASONS

1. The respondent has applied for a reconsideration of the reserved judgment dated 4 August 2023 which was sent to the parties on 21 August 2023 ("the Judgment"). The grounds are set out in his letter dated 29 August 2023, which was received at the tribunal office on that day.
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in two separate bundles which were adduced by the parties.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The grounds relied upon by the respondent are these. Upon receipt of these proceedings the Tribunal office listed this claim for hearing. The respondent submitted a response, but he was on holiday at the time of the hearing, and he wrote to the Tribunal to ask for the hearing to be postponed. Unfortunately, that application was not dealt with, and I had not been informed that application at the time of the hearing on 4 August 2023 which gave rise to the Judgment. In other words, the hearing took place in the absence of the respondent, despite his application for the hearing to be postponed until such time as he could attend.
6. In these circumstances in my judgment it is clear that the Judgment should be reconsidered, and it stands to be varied or revoked under Rule 70, because it is in the interests of justice to do so. I have therefore reheard the claimant's claim today, in the presence of the respondent, in order to determine the extent to which the Judgment should be varied or revoked.
7. The respondent suffers from dyslexia and has difficulty reading and writing. He was accompanied by his partner Dawn who assisted him in the presentation of case and in questioning the claimant. The respondent was also afforded further time to consider matters during the course of this hearing whenever requested and/or as appropriate.
8. In this case the claimant Miss Sarah Ball brings monetary claims for unlawful deduction from wages against her ex-employer the respondent Mr Scott Belsom trading as SJS Security. The respondent denies the claims.
9. I have heard from the claimant. I had also earlier accepted a short statement of evidence from Mr Joshua Phillips on behalf of the claimant, but I can only attach limited weight to that statement because he was not present to be questioned on his evidence. The respondent attended and gave evidence today. I have also from Mr Tyrone Carpenter who gave evidence on the respondent's behalf.
10. There was a significant degree of conflict between the parties. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
11. The claimant's version of events is this. The respondent Mr Scott Belsom runs a security business, and he trades as SJS Security. The claimant was employed by the respondent from 16 March 2022 until she resigned her employment on 24 October 2022. She worked as a Door Supervisor, and she also did additional duties for 10 hours per week dealing with administration, payroll, invoices, and reservations of security staff. She says that she knew the details of the respondent's bank account sort code and account number, and that it was an account in his name, because she would add this information to the invoices which she raised to third parties. However, she did not have access herself to the respondent's bank account, and she could not authorise payments from it. The claimant says that during the short period of time that she worked for the respondent she made contact with HMRC and tried to establish a system for payment of PAYE tax and National Insurance, but the relevant information from HMRC, which was sent to the claimant's home address, was never dealt with satisfactorily by him.
12. The claimant was claiming universal credit throughout this period and says that she could only earn a certain amount before her benefits would be adversely affected, and her understanding was that she could not become self-employed because this too would have had an adverse effect on her right to claim benefits. For these reasons she was only ever an employee of the respondent for a limited number of hours.
13. The claimant asserts that the respondent failed to pay her her wages due to her for October 2022 amounting to £679.00 gross. This would ordinarily have been paid in November 2022, but she had left employment at that stage, and no such payment was made. She says that this sum was unlawfully deducted from the wages otherwise due to her. In addition, the claimant had previously been required by the respondent to deduct 25% of gross wages payable to employees pending registration of his business with HM Revenue and Customs. 25% of the claimant's wages for the months of May to September 2022 inclusive (which were paid in arrears between June and October 2022) were thus deducted from the gross

- sums otherwise payable to the claimant. These deductions amounted to £598.40 in total for those five months. However, the respondent failed to make these payments to HMRC, and they have therefore been unlawfully deducted from the claimant's wages. She says that the respondent has therefore made unlawful deductions from her wages totalling £1,277.40.
14. In reply, the respondent has asserted in its response that he trades through a limited company namely SJ Security Solutions Limited, and that the claimant was effectively a business partner, either through this limited company, or because she was in partnership with him. The respondent accuses the claimant of having acted dishonestly in a number of respects, and he claims that the claimant has already taken any money which she was due for October 2022 by invoicing for it and taking the money from the respondent's account. She raised invoices up to and including April 2022 in the name of SJ Security Solutions, but from the end of April 2022 onwards invoices were raised in the name of SJS Security. The respondent claims that this shows that the claimant had joined him in business having agreed to incorporate a new limited company in the name of SJS Security Solutions Sussex Ltd.
 15. In my judgment the respondent faces a number of evidential difficulties in establishing his version of events, mainly because of the complete absence of the relevant documents which would otherwise have supported his assertions. In some instances, documents required by law were not forthcoming and were certainly not in the evidence before me. These include a statement of the claimant's terms and conditions of employment and itemised pay statements. There is no documentary evidence of the establishment of a separate limited company, nor a partnership agreement, to persuade me that the claimant and the respondent were ever in business together. Mr Carpenter's evidence was that he had been told that this was the case, but that was not conclusive evidence. In addition, there is no evidence from the respondent that the income received by his business was ever taxed, either through a limited company, through a partnership, or otherwise.
 16. It seems to me that the claimant's version of events is simply more credible. It seems to me far more likely that the claimant worked as an employee on a part-time basis so as not to affect her claim for universal credit, and that she had no interest in becoming a joint owner of the business. It also seems credible that she deducted 25% from the sums payable to the employees of the business pending registration by the respondent with HMRC. It also seems credible that the respondent declined to pay her for the last month's wages after she had resigned employment and decided to work elsewhere.
 17. On the other hand the respondent was unable to satisfy me on the balance of probabilities that the claimant was employed through a limited company or alternatively that she was in partnership with him. He has been unable to indicate that the sums claimed by the claimant have already been paid. He cannot support his allegation that she committed some sort of fraud from his business account by paying herself from other third-party payments. Although he suggests that she had access to his personal bank account, no evidence was provided to show that she made any payments from this account. In addition, I have received no evidence to suggest that this account was in the name of a limited company or partnership, rather than the respondent's own personal account.
 18. Bearing all of this in mind, I find on the balance of probabilities that the respondent Mr Scott Belsom was a sole trader who traded as SJS Security. The claimant was an employee of the respondent, and at no stage was she in partnership with him, nor a fellow director or principal of a limited company. I find that the respondent did not pay the claimant's October 2022 wages which she claims, and also that the 25% deductions from her previous wages were never paid to HMRC, and were therefore unlawfully deducted from her wages.
 19. I confirm my findings in the Judgment that the respondent has made unlawful deductions from the claimant's wages totalling £1,277.40, and the respondent is ordered to pay the claimant the gross sum of £1,277.40.
 20. Although it was clearly in the interests of justice to reconsider the Judgment, and to re-hear the claimant's claim in full with the respondent present and participating (which has now happened at this the hearing), nonetheless I find that the original Judgment was correct. In these circumstances the Judgment is confirmed, and it is not varied or revoked.

Employment Judge N J Roper
Dated 18 December 2023

Judgment sent to Parties on 09 January 2024

For the Tribunal Office