



# EMPLOYMENT TRIBUNALS

**BETWEEN:**

**MR CHRIS SAMWAYS AND JAMES MORGAN - Claimants**

**-and-**

**REGENCY SECURITY SERVICES (UK) LIMITED - First Respondent**

**REGENCY SECURITY MANAGEMENT SERVICES LIMITED - Second Respondent**

**REGENCY SECURITY GROUP LIMITED - Third Respondent**

**London South Tribunal by CVP**

**On: 09 February 2024**

**Before: Employment Judge Martin**

**Representation**

**Claimant: Ms I Brown - Counsel**

**Respondent: Ms K Milnsbridge – Financial controller**

## RESERVED JUDGMENT

The judgment of the Tribunal is:

1. Both Claimants are workers
2. Both Claimants are entitled to holiday pay
3. The Respondent shall pay to Mr Morgan the sum of **£1,917.72** in relation to holiday pay untaken at the end of his employment
4. The Respondent shall pay to Mr Samways the sum of **£2,791.20** in relation to holiday pay untaken at the end of his employment.
5. The Respondent made unauthorised deductions from both Claimants wages

6. The Respondent shall pay to Mr Morgan the sum of **£2,159.06** in relation to unauthorised deductions from wages
7. The Respondent shall pay to Mr Samways the sum of **£2,791.20** in relation to unauthorised deductions from wages
8. The Respondent did not provide either Claimant with written particulars of employment as stipulated in s1 Employment Rights Act 1996.
9. The Respondent shall pay to each Claimant four weeks pay.
- 10.** The Respondent shall pay to Mr Morgan the sum of **£1,453.08**
- 11.** The Respondent shall pay to Mr Samways the sum of **£1,075.68**
12. The Claimants application for costs in relation to the abortive hearing on 19 October 2023 was uncontested. The Respondent shall pay to the Claimants the sum of **£4,580.70**.

## **REASONS**

1. I have considered all the evidence. These reasons are confined to that evidence which is relevant to the issues and necessary to explain the decision reached. I am not setting out every part of the evidence I heard. I had before me an agreed bundle of documents comprising 237 pages. Witness statement from both Claimants, Ms Mansbridge (Financial Controller), Mr Sullivan (Payroll Manager) and Mr Lindley (Operations Manager). I also had written submissions from the Claimant.
2. The Claimant's brought claims of unauthorised deductions from wages, unpaid annual leave and for failure to provide written particulars of employment. The Respondent defended the claims on the basis that the Claimants were not employees or workers so were not entitled to make such claims.
3. There was a hearing listed for which did not go ahead because the Respondent had not complied with the order for disclosure of documents. The Claimant's made a costs application for the wasted costs. This was not contested by the Respondent who accepted it was at fault and did not query or challenge the amounts claims. I therefore awarded the full amount claimed of £ .
4. The Claimant provided detailed submissions with a comprehensive analysis of the law. I do not intend to repeat it here but to refer to the relevant parts in my analysis.
5. The Respondent is one of the largest companies providing security doorman to clients. It has about 127 employees and at any one time about £1,000 doorman

on its books. Both Claimants were doorman. Mr Morgan worked from [ ] to [ ]. Mr Samways from [ ] to [ ].

6. Initially the Claimants were classified by the Respondent as being self employed and submitted invoices for payment. On or around [ ] a decision was made that to ensure that tax was properly accounted for the doorman would not be paid by invoice, but paid by PAYE. A payroll company was employed to manage this for the Respondent. From this time, the Respondent did not categorise the Claimants as self employed but as sole traders. In evidence and in documents they also categorised the Claimants as workers.
7. There are three employment categories in the Employment Rights Act 1996. Employees, worker and the self employed. There is no fourth category of sole trader. During the Respondent's evidence, it was clear that the reason that there was a change in payment method was for tax reasons only and was not to do employment issues.
8. The Respondent says that the Claimants were sole traders and not workers or employees. I interpret this to mean the Respondent says that the Claimants are self employed that being the correct legal category for an individual to be working for a company who does not have the right to holiday, to claim unauthorised deductions from wages or written particulars of employment. It became clear that the reference to self employment in the Respondent's eyes related to the requirement for invoices for work done rather than any legal categorisation of employment status.
9. The Respondent accepts that there is no evidence of any written particulars of employment as required by s1 Employment Rights Act 1996 and that the employment documentation at the time the Claimants were employed was not "*fit for purpose*".
10. When considering employment status, my role is to ascertain the reality of the employment relationship on a day-to-day basis and look behind any written documentation. Written documentation is considered only as a very small part of the overall picture.
11. The Respondent has clients who have need of doormen. The Respondent supplies the doorman required. The Respondent puts on an app, the suggested rota and the doormen can accept the shift or not. The doorman is told the place of work, the hours of work, what they should wear, what they will be doing and when they can take breaks. Much of this is contained in the site instructions. If asked they are expected to identify themselves as working for the Respondent. It is the Respondent's clients who determine what work is available, the place, times and duties.
12. The Respondent says that doormen can substitute workers. The Claimant says they never did this, and if they could not work for example if sick, then it would be up to the Respondent to find a replacement doorman. Mr Lindley accepted that it was generally expected that once the doorman had accepted a shift they would be expected to do it.

13. The doormen were able to claim expenses in relation to shifts worked. If they did not turn up repeatedly they would not be offered more shifts.
14. The Respondent referred in submissions to WhatsApp messages in which the then Area Manager Mr Taylor, said "We DO NOT do self-employed", and "We as a company cannot have SEDS" (self-employed door supervisors). I do not place much weight on this, as already said, the Respondent does not understand the legal concept of the different types of employment status. Similarly, I do not place much weight on the Respondent's evidence in which they called the Claimants workers.
15. Likewise, I do not place much weight on the fact that the Claimants pay tax and national insurance through a PAYE system. Whilst this could be an indicator of worker status it is not determinative.
16. Neither Claimant had any other employment.
17. Mr Samways was enrolled in a pension scheme; Mr Morgan was offered a pension scheme but declined.
18. I have considered all the evidence in the round. My conclusion is that both Mr Samways and Mr Morgan were workers and were not self employed. The essential elements of self employment are not made out. I take note of the case of *Byrne Brothers (Formwork) Limited v Mr A M Baird, Daniel McCarthy, Denis McCarthy, John McDonough* No. EAT/542/01 and considered whether there was "*a sufficiently arm's-length and independent position to be treated as being able to look after themselves in the relevant respects*". In line with this case, I considered the degree of control exercised by the Respondent. I find that the Respondent did exercise control as set out in paragraph 11 above. The Respondent controls the hours worked, the place to work, when breaks are taken, uniform and the duties required.
19. I also considered the exclusivity of the engagement and the duration. Whilst the Claimants were allowed to work elsewhere, when they accepted a shift they were required and expected to carry out that shift. I find that the Claimants were subordinate to their area manager, much as in a normal employment relationship.
20. I find that notwithstanding the evidence from the Respondent that personal service was integral to the relationship. Whilst the Claimants were able to refuse a shift when the rota was sent to them, once it was accepted they were expected to personally work the shift.
21. I find both Claimants to be workers.
22. Having made this finding, I then considered the claims for holiday pay. Workers are entitled to paid holiday. Regulations 13, 13 a, 14 and 16 of the Working Time Regulations 1998 apply.

**Reg 13**

- a worker is entitled to four weeks' annual leave in each leave year ...

**Reg 13A**

a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is

... (e) — 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days ..."

**14.—(1) Paragraphs (1) to (4) of this regulation apply where –**

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the

formula—

$$(A \times B) - C$$

Where- A is the minimum period of leave to which the worker is entitled under Regs 13 and 13A

B is the proportion of the worker's leave year which expired before the termination date

C is the period of leave taken by the worker between the start of the leave year and the termination date.

**16(1)** A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A at the rate of a week's pay in respect of each week of leave.

**(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) —.**

23. The Claimant has set out in submissions its calculations regarding holiday pay. The Respondent did not dispute the calculations. I have therefore awarded holiday pay to the Claimants as calculated and set out in their respective schedules of loss as follows:

**Mr Morgan            £1,917.72**

**Mr Samways        £2,791.20**

24. I find that the Respondent made unauthorised deductions from wages from both Claimants pay. There was no document (as accepted by the Respondent) authorising them to make deductions. In submissions, but not in evidence, the Respondent says that not all the deductions are owing as there were advances made in the past. This was not put to either Claimant during their evidence and there was no documentary evidence referred to about these advances in pay. I have therefore disregarded this. In any event there was no authorisation in writing to deduct any advance in pay from the Claimants pay. The deductions in relation to Accountancy Fees; Client deductions and Administration are unauthorised.

25. I accept the figures put forward by the Claimants. The Respondent shall pay the following sums:

**Mr Morgan £2,159.06**

**Mr Samways £1,624.93**

26. I find that the Respondent failed to provide written particulars of employment as it accepts. S.38 of the Employment Act 2002 ('EA') states as follows:

**(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.  
[...]**

**(3) If in the case of proceedings to which this section applies—**

- (a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and**
- (b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by a worker) under section 41B or 41C of that Act,**

**the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.**

**(4) In subsections (2) and (3)—**

- (a) references to the minimum amount are to an amount equal to two weeks' pay, and**
- (b) references to the higher amount are to an amount equal to four weeks' pay.**

27. I award four weeks pay as compensation to each Claimant as follows:

**Mr Morgan £1,453.08 (calculations as set out in schedule of loss)**

**Mr Samways £1,075.68 (calculations as set out in schedule of loss)**

28. Four weeks has been awarded because there was a total failure to provide the written particulars of employment. The Respondent is a large company with the resources to ensure that employment related paperwork is up to date and legally compliant.

Employment Judge Martin

Date: 09 February 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
14<sup>th</sup> February 2024

FOR EMPLOYMENT TRIBUNALS