



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Dumi

**Respondent:** Platinum Security Guards Limited

**Heard at:** London Central (via Cloud Video Platform)

**On:** 19 October 2023

**Before:** Employment Judge Joffe

## Representation

**Claimant:** Represented himself

**Respondent:** Mr K Putman, HR consultant

# JUDGMENT

The claimant's claim for breach of contract alternatively unlawful deductions from wages is not upheld and is dismissed.

# REASONS

## Claims and issues

1. This claim arose from an arrangement between the claimant and the respondent that the claimant would provide security services at events connected with the King's coronation on 6 May 2023. The claimant says that he attended for work but was not allowed to work or paid for the shift. His claim is a claim for unlawful deduction from wages and/or breach of contract. The sum claimed is £294. The respondent says the claimant was never its employee or worker and that he is not owed any sum for the shift.

## Findings of fact

2. This was a two hour full merits hearing. I did not have a bundle but I saw the claim form and response and some documents provided by the claimant, described, insofar as relevant, below.
3. I heard evidence from the claimant on his own behalf.

4. The claimant applied to work on as a security guard at events for the coronation. This was an opportunity offered by the respondent through a WhatsApp group (the makeup of which was not further described to me).
5. The claimant completed an online application on 2 May 2023 and was then given the opportunity to book himself in for a shift, which arrangement was then confirmed in a text message sent by the respondent:

*SHIFT CONFIRMATION*

*King's Coronation*

*Saturday 6<sup>th</sup> May 2023*

*Meet up location [hyperlink with location]*

*This is the exact location for sign in*

*Sign in time: 03:30*

*Start time: 04:00*

*Finish: 16:00*

*Rate SIA: £12.25*

*Rate Steward: £11.95*

*Both SIA and steward will be paid double pay*

*Please aim to arrive 30 MINUTES before the shift to SIGN IN. If you arrive late you will be sent home without PAY.*

6. On 3 May 2023, the claimant downloaded an app he was sent by the respondent which was said to contain directions to the location he was required to attend.
7. In the small hours of 6 May 2023, the claimant set off from his home to the location he had been directed to, which was in the Mall. He said, and there was no contrary evidence from the respondent, that in fact the location he was directed to was not the signing in location. There were delays due to transport problems and he did not arrive at the location until about 3:50 am. He telephoned Mr Alvarado of the respondent at 3:53 am and after a series of phone calls and some difficulty, the claimant presented himself at the signing in location in Green Park at approximately 4:30 am. He was eventually told that he would not be required and was sent home and not paid.

**Law**

8. Section 230 of the Employment Rights Act 1996 defines ‘employee’ and ‘worker’ for the purposes of the Act:
- (1) In this Act “*employee*” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Act “*contract of employment*” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Act “*worker*” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker’s contract shall be construed accordingly.

#### Unlawful deductions from wages

9. Section 13 of the ERA 1996 provides that an employer shall not make unauthorised deductions from a worker’s wages, except in prescribed circumstances. Wages are defined in section 27 as ‘any sums payable to a worker in connection with his employment’, including ‘any fee, bonus, commission, holiday pay or other emolument referable to [the worker’s] employment, whether payable under his contract or otherwise’ with a number of specific exclusions.
10. On a complaint of unauthorised deductions from wages, a tribunal must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasion: Greg May (Carpet Fitters and Contractors) Ltd v Dring [1990] ICR 188, EAT.
11. The task of a court or tribunal is to decide the objective meaning of the language in which the parties have chosen to record their agreement. If there are two possible constructions, the court or tribunal is entitled to prefer the construction which is consistent with business common sense: Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The “Ocean Neptune”) [2018] EWHC 163 (Comm).
12. In this case, it makes no difference to the analysis whether the claim is considered as breach of contract or unlawful deduction from wages, save that breach of contract claims in the Tribunal may only be brought by employees.

#### **Conclusions**

13. I was satisfied that the claimant had a contract with the respondent which was at least a worker's contract. He was required, as is common in the security industry, to turn up and perform the work himself. There was nothing at all to suggest that the respondent was in any way a client or customer of a business run by the claimant.
14. The contract was contained in the communications between the parties and relevantly in the shift confirmation text message. It was an express term that in order to work the shift offered and be paid for it, the claimant was required to arrive by 3:30 am to sign in. If he was late for the shift he would not be paid. I concluded that the proper construction of the text message was that 'late' meant late for sign in rather than late for the start of the shift. I reached that conclusion on the basis of the following features of the text message:
  - a. The repetition of the sign in time;
  - b. The use of capital letters to emphasise the importance of arriving at the sign in time;
  - c. The fact that the reference to lateness occurred in the section of the text message which exhorted the claimant to arrive at the sign in time.
15. I considered whether the words 'aim to arrive' created an ambiguity as to whether there was a requirement to arrive at the sign in time and as to what 'lateness' meant, but reading the message as a whole I concluded that it did not. Looking at it another way, it seemed to me that if an officious bystander had asked the parties at the time when the claimant was required to present himself to avoid being late for the shift, the parties would have said '3:30 am'.
16. To give the contract business efficacy, I concluded that there was an implied term that the claimant had to be told where to go to sign in.
17. The claimant relied on the delay in him making his way from the location in the Mall he said he had been directed to and getting to the actual sign in point. If the facts had been that the claimant had arrived at the Mall by 3:30 am, I would have concluded that he had complied with the contract and it would have been a breach by the respondent of the implied term that stopped him being available to start the shift at 4 am.
18. However, on the facts I have found, the claimant was himself in breach because he arrived late at the location he says he was told to arrive at. In those circumstances, he would have sustained the same loss even had the respondent not been in breach of the implied term. I understood that the location the claimant went to and the actual sign in location were not geographically far apart. But for the respondent's antecedent breach of the implied term, the claimant would still have arrived later than 3:30 at the signing in location and would not have been entitled to work or be paid under the contract.
19. For the reasons, I rejected this claim.

20. I must apologise on behalf of the Tribunal for the delay in provision of these Reasons. The claimant's application for written reasons was not referred to me until 19 February 2024 at a point when I was on leave.

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Employment Judge **Joffe**

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Date 8 March 2024

JUDGMENT SENT TO THE PARTIES ON

19 March 2024

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FOR THE TRIBUNAL OFFICE