



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE ELLIOTT (Sitting alone)
BETWEEN:

Mr A Vilagi

Claimant

AND

WDG Construction Ltd

Respondent

ON: 9 April 2024

Appearances:

For the Claimant: In person

For the Respondent: No appearance

REASONS FOR JUDGMENT

1. The decision in this case was given orally on 9 April 2024. On 17 April 2024 the tribunal received an email from Mr Fairbrother of the respondent saying that the respondent wished to appeal. This was treated as a request for written reasons for the decision which the respondent needs if it wishes to present an appeal.
2. By a claim form presented on 8 January 2024, the claimant Mr Arpad Vilagi brings a claim for unlawful deductions from wages for unpaid wages as a painter and decorator.
3. The claimant's period of work was from 12 to 22 December 2023, a period of 10 days during which the claimant said he worked for 7 days.

Non-attendance of the respondent

4. There was no appearance from the respondent at this hearing. It was not possible for the clerk to place a call to the person named in the ET3, Mr Fairbrother, as no telephone number was supplied.
5. The claimant did not know anything about whether the respondent the respondent would be attending.

6. The hearing was due to start at 2pm. I delayed the start until 2:10pm to give Mr Fairbrother a chance to join. He did not appear.

The issues

7. The issues for the tribunal were: (i) whether the claimant worked for the respondent and (ii) whether he is owed pay for 56 hours in the total sum of £980 being an hourly rate of £17.50. The response to the claim was that the claimant did not work for the respondent.
8. The claimant seeks to recover other sums such as a payment for his car, as set out in the claim below and the cost of fines that were due one day before he says he was due to be paid and for the cost of travel and food. I explained to the claimant that the tribunal only had power to award the unpaid wages in this type of claim and not the consequential losses that he seeks. In addition the claimant had not submitted any evidence in support of these sums.

Witnesses and documents

9. For the claimant the tribunal heard from the claimant and Mr Jonathan Pearce of Blueberry Builders. There was no witness for the respondent.
10. There was no bundle of documents. This was a short track case where no case management orders had been made. The claimant had sent to the tribunal a small number of individual documents (less than 10 including 2 statements) which are referred to below.
11. There was a short statement in the form of a message from the claimant's former colleague Mr Alex Monteith. The claimant understood that Mr Monteith would attend the hearing. The clerk to the hearing called Mr Monteith who said he did not wish to attend. I took his short statement into account.

Findings of fact

12. The respondent is an App business providing services for contractors and construction workers. It is a click and hire method of employment and acts as an employment agency.
13. The details of the claim set out in box 8.2 of the ET1 were as follows:

*I applied for a job and was contacted by an employment agency by the name of WDG Construction by a person named Richard.
The details of the workplace weren't sent to me formally nor was I sent any form of agreement, terms or contract.
I went to the workplace and was greeted by Jonathan from Blueberry Builders. I worked for 3 days initially and was told to expect the payment for this on the 22nd of December. I didn't receive any*

payment and after multiple calls/emails could not reach Richard. Another worker by the name of Alex is in this same situation and has also not been paid....

I spoke with Jonathan regarding the payment and he said he has sent the payment in full to the agency and sent me an invoice of £2100 to WDG Construction from Blueberry Builders. Jonathan told me that the agency was responsible for paying me.

I visited the address of the agency as stated on the uk gov website and it was closed. On arrival, I got a call back from Richard and he began to explain that the company he sent me to was responsible for paying me. Since then I havent been able to reach him.

Jonathan reached out to me claiming he has filed a police report regarding this matter and that he is trying to retrieve the £2100.

On the day of payment, I was waiting to receive the money in order to pay the fine as my car got clamped on the worksite. As i didnt have the money, my car was towed. I borrowed money to retrieve my car which costed me £378.00

I have several debit payments due to me and havent been able to make them as I havent been paid. I have had to borrow money for food and essential items as I have 2 kids.

For the 7 days work, i'm owed £980.00 however if this issue is resolved, I expect further compensation for the trouble caused. Thank you.

14. The claimant applied for painting and decorating jobs on the website Indeed. He was contacted by Richard from WDG Construction Ltd.
15. Richard told the claimant, "*if you accept I am paying you starting from £17.50 per hour up to £20 depending on your experience*". He told the claimant that if he was good, he would pay him more, up to £20 per hour.
16. The claimant said "yes", he accepted. He needed the job and was prepared to accept £17.50. The claimant was clear in his understanding that the respondent was going to pay him. There was no mention to him of needing to claim payment from the client.
17. The claimant was given an address and postcode of where the work was to be done. The decorating job was at a private house. The claimant did 7 days' work at the house.
18. In the ET3 Response to the claim, the respondent said only that the claimant did not work for them and "*We are a App on Google Play and iTunes*".
19. I saw an invoice dated Friday 22 December 2023 from Mr Jonathan Pearce of Blueberry Builders to Mr Richie Anderson for the sum of £1,260. On 22 December 2023 Mr Richie Anderson, who signed himself on his email as from "*Operations WDG Ltd*" said "*Hello Jonathan Pearce Here is the invoice as requested due today before 4:00pm Friday the 22nd December via BACS same day payment*". Bank details were given

for WDG Ltd.

20. Mr Pearce replied on the same day: *"Hi Richie I made this payment above at around 3pm this afternoon. Both workers have phoned me up saying they haven't been paid. Please can you speak to them and ask them not to call me. Thanks Jonathan"*.
21. On 22 December when he did not get paid, the claimant called Richard at the respondent. When claimant called subsequently, he found that the respondent's number did not ring out. He could not make contact with them. The claimant called Mr Pearce who told him that he had already paid the Agency and expected them to pay the claimant and his colleague Alex.
22. I saw a document dated 19 December 2023 addressed to Burberry Builders in Ealing stating *"Due date 19 December 2023 before 4pm BACS SAME DAY PAYMENT"*. It was addressed to Burberry Builders in Ealing London W5. This document said *"Service Finder only"* and charged 48 hours at £17.50 in the sum of £840. The column for VAT was left blank. Mr Pearce understood this to be the wages, the finder's fee and the service charge.
23. Mr Pearce had been receiving phone calls from WDG Ltd for several years. He got a call every few months to ask if he needed any decorators, plasterers or carpenters. He used this service once before on 14 February 2020 and paid £135.20 for a carpenter for one day. This was described to him as a service/finders cost for the day. He said that he paid it. Mr Pearce did not receive any contact from that carpenter as to not having been paid. Mr Pearce did not pay the carpenter direct.
24. In December 2023 he received a call from Mr Anderson asking if he needed any tradesmen and he said he could do with a painter. Mr Anderson told Mr Pearce that he could supply two painters at £17.50 per hour or £140 per day each. Mr Pearce asked if that included the service cost and VAT and was told that it did, they could start on Wednesday. The two painters were the claimant and Alex Monteith.
25. Mr Pearce understood the figure to include the wages for the painters plus the agency fee and VAT on top. Mr Pearce thought it was a very reasonable charge for London. Mr Anderson told Mr Pearce that he had to send the money so that the painters could be paid on time. This gave Mr Pearce the clear understanding that the respondent would pay the two painters.
26. Mr Pearce's understanding was that the agency would pay the painters having taken their "cut" being the service cost. There was no discussion about Mr Pearce needing to pay the painters direct.
27. Mr Pearce also made an interim payment to the agency after 3 days.

28. On the afternoon of Friday 22 December 2023, Mr Anderson phoned Mr Pearce asking if he could transfer the money which he did at around 3pm. Mr Pearce then received calls from both painters including the claimant at around 6pm that day saying that they had not been paid. Mr Pearce thought that the agency may had closed early because it was the Friday before Christmas.
29. Mr Pearce made no agreement with either the claimant or the respondent as to being responsible for payment of the claimant's wages.
30. Mr Monteith said in a written message that he received a call from an agency called WDG Ltd. They told him there was some painting work available, they were an agency and they gave him the postcode of the house where the decorating was to be done. He was to work for them for 9 days and had to do a week in hand.
31. When he was expecting to be paid Mr Monteith called the agency and Richie, or Richard, told him that he was not the person responsible, he was just an employment finder. He said Mr Monteith would be paid by "*his boss*" at Blueberry Builders. Mr Pearce told Mr Monteith that it was the agency who was responsible for to paying them. Both the agency and Blueberry Builders each told Mr Monteith that the other party was responsible for paying them.
32. Mr Pearce tried to recover the money he had paid to the agency but he has not succeeded in this.
33. I make the following findings of fact based on the above. The claimant was contacted by Mr Richard Anderson at the respondent and offered work with Blueberry Builders at a rate of £17.50 per hour. During that conversation in December 2023 Mr Anderson said "*I will pay you £17.50...*" and there was no discussion about the claimant needing to obtain payment from Blueberry Builders.
34. I find that there was a binding agreement between the claimant and the respondent that he would provide painting and decorating services for the Blueberry Builders and that the claimant would be paid by the respondent.
35. I find that similarly Mr Pearce was told that the hourly rate included the service charge and VAT. The inclusion was that of the wages.
36. Based on the evidence of both the claimant and Mr Pearce I find that the respondent is responsible for payment off the claimant's wages. The claimant had a verbal and binding agreement with the respondent and he was a worker for the respondent. He accepted the terms as to wages as offered by Mr Anderson.

The relevant law

37. Section 13(1) of the Employment Rights Act 1996 says that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.
38. A failure to pay is a deduction of 100%. Section 13 covers both employees and workers.

Conclusions

39. The respondent has made an unlawful deduction of 100% of the claimant's wages in the sum of £980.
40. The claim succeeds and the respondent shall pay to the claimant the sum of £980.

Employment Judge Elliott
Date: 18 April 2024

Judgment sent to the parties and entered in the Register on: 1 May 2024

_____ for the Tribunal