



EMPLOYMENT TRIBUNALS

Claimant

Miss K Norde

v

Respondent

Nationwide Renewables Ltd

Heard at: Sheffield (by video link – Kinly Cloud)

On: Friday 14 June 2024

Before: Employment Judge James

Representation

For the Claimant: In person

For the Respondent: Mr T Ellis, paralegal

JUDGMENT

(1) The claim for unpaid wages is upheld. The respondent is ordered to pay to the claimant the sum of £519.75 for July 2023 and the sum of £349.13 for August 2023, a total of £868.88.

REASONS

The issues

1. The agreed issues which the tribunal had to determine were first, whether the claimant was an employee or a worker of the respondent; second, whether she had been underpaid some of her wages during her employment; and third, if so, what amounts she is still due.

The proceedings

2. Acas Early Conciliation took place on 17 October 2023. The claim form was issued on the same date. The claimant makes a claim for unpaid wages.

The hearing

3. The hearing took place over one hour. Evidence and submissions on liability/remedy were dealt with during the hearing. Judgment was reserved, due to the Judge having another hearing at 11 am.

4. The tribunal heard evidence from the claimant alone, there being no witness evidence from the respondent. The tribunal also considered the documents provided by the claimant in an email sent to the respondent on 13 June 2024. There were no documents provided by the respondent.

Findings of fact

5. At the commencement of the claimant's engagement as a Telemarketing Agent, the claimant and others were asked their preference regarding self-employment. The tribunal accepts the claimant's evidence that she expressed a preference for employment or self-employment.
6. In the event, the claimant was given a contract for services – a self-employed contract. Although the claimant signed this, I am content that the label applied did not reflect the true agreement between the parties. For example, section 9 deals with direction and control and states that the subcontractor will not work under the direction and control of the company and is free to use her own initiative in completing the agreed works. I accept the claimant's evidence however that her manager, Priya, consistently checked in on the claimant and the team she worked in regularly during the working day, monitoring their progress and offering guidance on meeting sales targets. The respondent operates a tracking system for sales, which requires careful record-keeping and reporting by the Agent.
7. The claimant also took part in a training programme before signing any contracts. The training lasted a week. After her employment proper commenced, the respondent held regular progress meetings.
8. The Judge also accepts the claimant's evidence that she worked exclusively for the respondent during the period of her employment. She was also provided with equipment by the respondent, including computers, microphones and headsets, which were used by her to carry out the daily tasks. She was also provided with a company email address.
9. There was some flexibility in relation to hours at the beginning of each month, but a specific set of hours were provided every Friday for the following week. In effect, the claimant worked 20 hours a week or so during her employment.
10. As for the amounts owed, the claimant claims a total of £519.75 for July. The respondent accepts that amount is due.
11. The claimant claims 33.25 hours at £10.50 per hour for the weeks she worked in August, a total of £349.13. I am satisfied from the evidence provided by the claimant, including the SDR tracker spreadsheets showing customers names and when they were booked, and the tables showing hours worked between 1 and 16 August 2023, and the qualifying callbacks in August, that the claimant did carry out the work she claims for.
12. Mr Ellis challenged the claimant on the basis that she had provided a bus pass for July but none for August. The claimant explained to the tribunal that this is because she mainly relied on her parents giving her a lift to work during August. The tribunal does not find the lack of a witness statement from the claimant's parents a surprising omission; and notes in any event that the respondent has not provided any witness evidence at all. On the balance of

probabilities, therefore, the tribunal concludes that the claimant did work 33.25 hours for the respondent during August.

Relevant law

13. Section 13 Employment Rights Act 1996 gives a right to a worker/employee, not to have unauthorised deductions made from their wages during their employment. Section 23 gives a right to bring a claim to an Employment Tribunal, if wages have not been paid properly.
14. Section 230 Employment Rights Act 1996 defines an employee as someone working under a contract of employment; and a worker as someone working under a contract of employment, or '*any other contract, express or implied ... 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*'.
15. Following the decisions of the Supreme Court in *Autoclenz v Belcher*, and more recently in *Uber v Aslam*, it is clear that the legal label that parties put on a working relationship is by no means conclusive as to the nature of that relationship. It is the job of a tribunal hearing a claim in which employment status is disputed, to consider what the true nature of the relationship is. The written documentation may throw some light on that; but it is not conclusive. It is open to a tribunal to conclude that the way that the working relationship was conducted in practice, demonstrates that the written agreement does not reflect the true nature of the relationship between the parties.

Conclusions

16. The tribunal is satisfied that the claimant was, at the very least, a worker for the respondent, and that therefore she is entitled to bring a wages claim in the employment tribunal. The tribunal notes in particular that the respondent exercised control over the way that the claimant carried out her work; provided her with the equipment to do that work; and monitored the way that the work was carried out.
17. Whilst the tribunal notes that the claimant did sign a contract for services, rather than a contract of service, the tribunal accepts that the claimant would not necessarily know the difference between the two and does not find the label put on the contract she signed, in a pressured environment, to be conclusive of the employment relationship.
18. Since it is not necessary to do so, the tribunal does not come to any conclusion as to whether the claimant was employed under a contract of employment during the time she worked for the respondent. It is sufficient that she was, at the very least, employed as a worker.
19. The tribunal is also satisfied, on the basis of the evidence before the tribunal, that the claimant has not been paid the wages that she claims for July, and August. Judgement is given for those sums in favour of the claimant, as set out above.

Employment Judge James
North East Region

Dated 14 June 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>