



EMPLOYMENT TRIBUNALS

Claimant: M Sykes

Respondent: Coanda Aeronautical Turbines Limited

Heard at: Middlesbrough Employment Tribunal **On:** 5th August 2024

Before: Employment Judge McGregor

By: In Person

Representation

Claimant: Appeared in person, unrepresented

Respondent: Appeared represented by Miss Anderson from Croner

REASONS

1. Further to the oral judgment given on and written judgment issued on the 5th August 2024, the Tribunal received an email from the Claimant requesting written reasons for the Tribunal's decision on the 31st August 2024.

The Hearing

2. The Claim was issued in the Newcastle Employment Tribunal on the 12th of March 2024. The Respondent provided a response to the claim on the 26th of March 2024. The Claimant brought a claim for unauthorised deductions from wages.
3. The hearing was listed for a full merits hearing, in person on the 5th of August 2024.
4. The Respondent's witness Mr Andrews failed to attend the hearing. The Tribunal were informed that Mr Andrews was in Hong Kong and meant no deliberate discourtesy to the Tribunal. He had misread the Case Management Order of the 14th of June 2024. The Respondent's representative requested a postponement. This was the second request for a postponement based on the Mr Andrews being abroad, unable to attend a hearing and misunderstanding Tribunal orders.
5. Mr Andrews' witness statement had been filed and served late on the 23rd of July 2024, in breach of the Order of the 14th of June 2024 for service by

the 19th of July 2024. This was the second time that the Claimant had attended court in the matter. On the previous occasion adjournment was only granted because the court bundle was illegible in format. It was not granted because of Mr Andrews' difficulties.

6. Having heard submissions from both parties, the Tribunal dismissed the application to postpone the hearing and considered that the Respondent had failed to comply with the Employment Tribunal Rules of Procedure 2013 ("the Rules"), and in accordance with rule 37 and the overriding objective of the Rules, the Respondent's response was therefore struck out.
7. At the hearing the Tribunal had sight of the ET1, correspondence, response, the Claimant's witness statement and bundle provided. The Tribunal heard the sworn evidence of the Claimant.

The Claim

8. The Claimant's claim relates to a short period of employment as a Vice President of Executive Affairs, Marketing and Risk for the Respondent Coanda Aeronautical Turbines Ltd. He carried out work for the Respondent company, having been engaged by Mr Andrews between the 9th of November 2023 and the 26th of February 2024. The Claimant claimed for unauthorised deductions from wages during this period, having received no money for the work that he did.
9. The Claimant pursued compensation for unpaid wages and a starting bonus, he did not pursue any amounts in relation to a company car that he had been told would be part of his remuneration package.

The Issues

10. The issues to be determined at the hearing were as follows:
 - a. Was the Claimant a worker of the Respondent within the meaning of s230 ERA 1996?
 - b. Is the claim in respect of wages (under section 27 of the Employment Rights Act 1996 ("ERA 1996"))?
 - c. Has the Respondent made a deduction from wages (under s 13(3) ERA 1996)?
 - d. Was any deduction of wages authorised (under ss 13(2) and 13(3) ERA 1996)?
 - e. Was any deduction an "excepted deduction" (under s 14 ERA 1996)?
 - f. If an unauthorised deduction from wages was made: (1) How much arrears of pay is owed to the Claimant?

The Law

11. Part 2, ss 13 to 27B ERA 1996 sets out the statutory basis for a claim of unauthorised deduction from wages. ERA 1996 s 13 provides as follows:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) 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
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

12. Section 230 defines employees; workers etc. as follows:

(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.

(4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act “employment”—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract; and “employed” shall be construed accordingly.

13. “Wages” is widely defined. According to ERA 1996 s 27(1), it includes “any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise”.

14. The case of *Delaney v Staples (t/a De Montfort Recruitment)*, is authority that an employment tribunal has jurisdiction to resolve any issue necessary to determine whether a sum claimed under S.13 ERA is properly payable, including an issue as to the meaning of the contract of employment.

15. The approach tribunals should take in resolving disputes over what the worker is contractually entitled to receive by way of wages is that adopted by the civil courts in contractual actions — *Greg May (Carpet Fitters and Contractors) Ltd v Dring*. In other words, tribunals 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.

16. Determining what wages are ‘properly payable’ requires consideration of all the relevant terms of the contract, including any implied terms

17. A contract is a promise, or set of promises, that the law will enforce. In the context of an employment contract, for example, the employee usually promises to perform certain tasks for the employer, who in turn promises to pay the employee wages or a salary. There will also usually be a range of promises made by the employer covering matters such as holiday, sick pay and working conditions. The employee may also make promises relating to subsidiary matters, such as not working for other employers. These promises are enforceable in the sense that, if one party to the contract breaks a promise, the other party will be entitled to seek damages for that breach or, in exceptional circumstances, an order from a court preventing further breaches from taking place.

18. Further in relation to a contract, there must be an agreement (usually consisting of an offer which is then accepted) made between two or more people, the agreement must be made with the intention of creating legal relations and the agreement must be supported by consideration — i.e. something of benefit must pass from each of the parties to the other. The individual terms of a contract must be sufficiently certain for the courts to be able to give them meaning.
19. The Claimant bears the burden of proving that there was a contractual relationship, and it was a worker contract falling within s230(3) of the ERA 1996.

Evidence

20. The Claimant and Mr Andrews were personally acquainted and shared business interests in aeronautics. Mr Andrews was the founder and President of Coanda Aeronautical Turbines Limited (“Coanda”). The company aimed to, amongst other things, establish itself in the highly specialist field of hydrogen powered aviation.
21. On the 30th of September 2023, the Claimant and Mr Andrews had a meeting to discuss working together and as a result, the Claimant shared his curriculum vitae with Mr Andrews. On the 12th of October 2023, the Claimant shared with Mr Andrews, a Non-Disclosure Agreement that he had drafted. This was a document representing that the Claimant agreed not to use confidential information received, in a manner that may be harmful to Coanda.
22. The Tribunal were referred to two such Mutual Non-Disclosure Agreements (NDA) relating to:
 - a) the Claimant Montague Sykes and Coanda, and
 - b) the Claimant’s wife Kirsten Kate Sykes and CoandaBoth documents are dated the 12th of October and both are signed by Mr Andrews on behalf of Coanda and the respective other party.
23. Turning firstly to the Claimant’s NDA, Paragraph 1 of the document states that:

“Each of the parties to the Agreement intends to disclose information (the Confidential Information) to the other party for the purpose of employment as the Vice President of Executive Affairs, Marketing and Risk, by Montague Samuel Sykes.”
24. Turning secondly to Kirsten Syke’s NDA, Paragraph 1 states that:

“Each of the parties to this agreement intends to disclose information (the Confidential Information) to the other party for the purpose of providing marketing and styling consultancy services to Coanda Properties.”
25. The Claimant’s wife is employed as a civil servant. The Claimant’s evidence was that his wife was also offered work by the Respondent. His wife would be paid on a consultancy basis through another business that the Claimant had active at the time, but effectively put on hold to work for the Respondent.

26. In October 2023, the evidence demonstrates that there was a personal relationship between the Claimant, his wife and Mr Andrews. They were spending time together including time dining and socialising. Mr Andrews was also engaging services from the Claimants sister-in-law, demonstrating that the Claimant and family members came to trust Mr Andrews such that they felt able to work for his company.
27. Both NDA documents were drafted by the Claimant and demonstrate what his belief about the nature of the proposed working relationships between the parties. It is intended for the Claimant's wife Mrs Sykes to work on a consultancy basis, whereas the agreement relating to the Claimant reflects that the Claimant would be employed by the Respondent.
28. Both documents were signed by Mr Andrews on behalf of Coanda. There was no evidence before the Tribunal that Mr Andrews has subsequently sought to amend or challenge the drafting of the documents with reference to how the employment relationship, in relation to the Claimant, was defined by him.
29. The NDA document was not intended to amount to a contract of employment, but I determined that in the absence of a contract of employment, and it being necessary to determine the nature of the agreement between the parties using the best evidence available, such a written document is relevant to demonstrate the intention of the parties in relation to the forming of an employment contract between them.
30. On the 12th of October 2023, the Claimant emailed the Respondent asking about whether there is an email address that he can contact regards HR issues. The response is that:
"Nope she starts the same time you do."
The Claimant's evidence was that one of the tasks that he would be responsible in establishing policies and procedures as well as the company structure and policies for the HR department.
31. When the Claimant was satisfied that the business had funds in place and it was viable, then the Claimant felt able to start work for the Respondent. He gave evidence that he started work for the Respondent on the 9th of November 2023. The agreed salary was £120,000 per annum or £10,000 a month. There was to be an initial payment of a £4,000 starting bonus. The Claimant gave evidence that the amount had originally agreed was the sum of £10,000 but due to cash flow, the Claimant agreed to receive the payment of the lesser sum. The substantial salary reflected the specialist nature of the role and the work he was to be engaged in.
32. The parties reached agreement both verbally and through messages exchanged between the Claimant and Mr Andrews, about the terms of his employment. The Claimant was not given an express written contract setting out precise terms including remuneration, entitlement to sick and holiday pay, the usual expected terms. The Claimant relied upon oral agreement and the contents of communications that I shall consider further below.

33. At the time, the Claimant gave credible evidence about having been working to set up his own company but decided to put that on hold to take up employment with the Respondent. The business was referred to as a startup, with some financing in place but continuing to seek financial resources through Mr Andrews' and others fundraising efforts. The project would require substantial funds. The Claimant was employed at the same time as Katy Scott (the Claimant's sister-in-law), who was employed as Mr Andrews' Personal Assistant.

34. The Claimant gave clear and convincing evidence that he had told Mr Andrews that he did not wish to be self-employed. That was not the employment relationship as far as the Claimant was aware. The Claimant believed that he would receive a salary that would be taxed at source, not through a process of invoicing to Coanda on an agency or consultancy type of basis.

35. The 9th of November 2024 is the date from which the Claimant claims to have been employed by the Respondent. That day there is an exchange of messages between the Claimant and Mr Andrews as follows:

Claimant: "Can you confirm the job as per. (Document entitled Vice President is sent to Mr Andrews.)

And salary, package etc please"

Respondent: "Yes confirmed the job package."

Claimant: "Great salary as agreed at £120 with car and normal employee package (when defined)?"

Respondent: "Car or push bike"

Claimant: "Push bike all the way! But car would mean I can go on the motorway."

Respondent: "Yes, salary agreed at £120 with car and normal employee package (when defined). Reviewed after 6 months."

Claimant: "Yes perfect thanks"

36. On the 1st of December there is a text message exchange during which the Respondent states that, "Manisha will handle all the payrolls starting from December 1 onwards." Demonstrating an intention that there will soon be a payroll system for payment of staff.

37. On the 27th of January 2024, Mr Andrews messages the Claimant as follows:

Respondent: "Where is your contract?"

Claimant: "Sorry?" ...

Respondent: "I was looking for your contract and pay rate to put into the budget."

Claimant: "It's 120k per year plus bonus etc."

Claimant: "So 10k per month."

Claimant: "We haven't finalised the proper contracts but it's on here the offer consideration and acceptance."

Claimant: "That's fine in UK law until we sort the contracts."

Claimant: "Plus we made some arrangements around starting bonus etc..."

38. The Claimant states that he and his wife are, “already employed legally. The contracts can wait until you get back. I have an example one to share with you that gives a good example.”
Mr Andrews replies and refers to needing to put the Claimant into an office and get him help by way of a personal assistant.
39. A job description of the Vice President’s role, including salary and benefits package is set out within the evidence bundle. It sets out the details of the job role that the Respondent expected the Claimant to conduct.
40. The Claimant provided evidence that he worked conscientiously in the job that he was doing, working hard to add value and experience to the expanding startup company. The Claimant worked closely with the Mr Andrews working from around 9am, he would see or speak to Mr Andrews at around 11.30am. He would take a break at some point in the afternoon but speak to Mr Andrews again around 5/6 pm, then work until 7/8pm. He worked under Mr Andrews’ direction but also independently on various projects. They held regular meetings and Mr Andrews described the Claimant as a “Wrangler” now, one of the team. The Claimant was engaged setting up internal policies and procedures and regularly attended meetings with external third parties where Mr Andrews would introduce him as the Vice President of the company. A corporate email address was to be setup for the Claimant, and he was going to get his own office in the future.
41. The Claimant was credible in the account of long hours that he worked, up to 12 hours a day during the period 9th November 2023 to the 26th of February 2024. He told the Tribunal of work pressures he encountered with complex work goals to meet.
42. The Claimant gave evidence that he would inform Mr Andrews that he could not meet targets within the timescales discussed. Reviews would lead to further instructions from Mr Andrews verbally or by text message. The Claimant regarded Mr Andrews as his superior and someone who could tell him what to do. The Claimant stated that the issue of how matters such as holiday pay or sick pay or time off did not come up due to the brief period over which he worked with Mr Andrews.
43. The Claimant referred to conversations and examples of evidence about work that he completed during his evidence. The Claimant was thanked and praised by Mr Andrews about the nature and quality of the work that he was conducting.
44. The Claimant corroborated the evidence that he expected to receive monthly wages with reference to the evidence in the form of written conversations and documents referred to above. The Claimant’s evidence was that he was owed the following (gross) sums:
November 23 - £6,333.00
December 23 - £10,000.00
January 24 - £10,000.00
February 24 - £9286.00

45. The Claimant also claims that the sum of £4,000.00 starting bonus is properly payable to him. I was reliant upon the oral evidence of the Claimant that was balanced and measured when the Claimant admitted he was accepting payment of a lower sum than originally agreed.
46. The total amount claimed by the Claimant was therefore the sum of £39,619.00 (gross amount).
47. The Claimant, in his duties relating to compliance and risk became concerned about working practices such that he contemplated whistleblowing in relation to non-compliance with financial legal obligations.
48. In an email dated the 26th February 2024, the Claimant set out his concerns in this regard to the Respondent. The email is entitled "Immediate resignation due to unresolved ethical and legal issues." He indicates that he resigns immediately from the Vice President role due to unresolved ethical and legal issues, pointing to his belief that he has seen a "fraudulent" document produced by the company. The Claimant asks for payment of his outstanding wages.
49. Text messages dated the 26th and 27th February also demonstrate that these work issues have caused a breakdown in the friendship between the Claimant and Mr Andrews. The Claimant did not receive payment for the substantial amount of work that he had carried out and on the 26th of February 2024 he felt that it was necessary to resign when expressing concerns about some of the practices that he believed exposed the company to risk.

Findings of Fact

50. I found the Claimant to be a considered witness who did not seek to embellish his evidence. The Claimant used supporting documents within the bundle to corroborate his evidence and as such it was compelling.
51. I decided that, based upon the evidence given, that the Claimant was engaged to work for the Respondent by Mr Andrews. The company was in its infancy and because of this, the terms of his engagement included the Claimant taking responsibility to set up structures within the company, including Human Resources, therefore there was no HR department he could contact about lack of contract or unpaid wages.
52. The Non-Disclosure Agreement between the parties, signed by both Mr Andrews and the Claimant, dated the 12th October 2023, reflects that the parties intend to work together. In the case of the Claimant, it reflects an intention that the Claimant will work as an employee. I found that Mr Andrews would not have signed this document if it were contrary to his beliefs and intentions in relation to their working relationship. The distinguishable feature with the NDA for the Claimant's wife, is the reference to her providing consultancy-based services.

53. I found that there was a contract of employment between the Claimant and Coanda that started on the 9th of November 2023. The Claimant discussed the terms of his employment with Mr Andrews before this date. On the 9th of November 2023, the Claimant sought to protect his position in conversation about his terms of employment with the messages to Mr Andrews. They included details of the £120,000 per annum salary, bonus, and reference to a company car.
54. The evidence of the conversation of the 27th of January 2024 demonstrated to me that the Claimant acted believing that a legally enforceable contract had been entered into by the parties. Mr Andrews did not challenge this. I found that this conversation demonstrates that there was an intention to finalise the terms of the contract later. In effect, the messages suggest that the Claimant was going to present his own contract of employment to Mr Andrews when he returned.
55. I was satisfied that the job package in a field where he had expertise to offer, was sufficient to attract the Claimant to put his own business interests on hold and conduct employment for the Respondent. I found that the Claimant became the Vice President of Executive Affairs, Marketing and Risk. This was an executive title with an executive salary package attached.
56. I determined that the Claimant is a highly skilled individual being engaged within a company providing specialist services. The Claimant is a working father who paused his own business interests to be engaged in the compelling business opportunity with Coanda. Mr Andrews had made sure that working at Coanda was an attractive prospect. He discussed potential income streams from lucrative grants available from Europe. The Claimant believed in the viability of the business and in his own ability, with others engaged on the project, to push it forward. I found that any suggestion that the Claimant was not conducting work with the expectation of receiving payment, in the terms he had discussed and as set out in the messages and documentary evidence, lacks all credibility.
57. I further decided that the tasks delegated to the Claimant, under the supervision of Mr Andrews were to be done by the Claimant personally. The Claimant undertook the tasks that he was asked to. The Claimant and Respondent met and communicated regularly, Mr Andrews taking a supervisory role over the Claimant's work.
58. Whilst the email dated the 26th of February 2024 refers to the Claimant's start date as the 1st of December 2023, I heard the evidence of the Claimant that I accepted, that he began carrying out work from the 9th November 2023, following the text message conversation. Whilst such a conversation is imperfect in terms of establishing the start date and nature of a contract, as there is no written contract of employment, I found that in all the surrounding facts and circumstances of this case, that was the appropriate employment start date. The Claimant worked hard for the Respondent throughout November. I decided that the Claimant worked as a full-time employee throughout the period for which he claims wages. The Claimant took no holidays during this period and only claims unpaid wages and bonus.

59. The Respondent did not formalise the Claimant's working arrangements in a written statement of employment particulars, a claim not pursued by the Claimant but a right within the ERA 1996. I found that it was not clear how the Respondent intended that the Claimant would be reimbursed for the significant hours he was putting into working for the Respondent.
60. It was my view that Mr Andrew's messages of the 27th of January 2024 asking about the whereabouts of the Claimant's contract are significant. They demonstrate that the Respondent believes a contract is in existence. He indicates his intention that the details of the contract would be written into the company budget. Mr Andrews is not suggesting that there is no contract is in existence. I found that Mr Andrews is enquiring about a written contractual document, not yet in existence. I considered this a reflection of the disorganised and casual approach that Mr Andrews was taking to the employment of the Claimant and other aspects of the business. In his duties in relation to compliance and risk the Claimant became concerned about working practices such that he contemplated whistleblowing in relation to non-compliance with expected business standards and legal obligations. He resigned instead.
61. In an email dated the 26th of February 2024, the Claimant set out his concerns in this regard to the Respondent. The title of this email is, "Immediate resignation due to unresolved ethical and legal issues." He indicates that he resigns immediately from the Vice President role due to the unresolved ethical and legal issues. The Claimant asks for payment of the outstanding wages. The Claimant had not done so before, but I determined that this was because of the infancy of the business and lack of an established HR department.
62. I decided that the sums sought by the Claimant are the sums that were outstanding to him as reflected in the messages dated the 9th of November 2023. The Respondent does not dispute the information when he responds to the messages. I found that the Claimant's evidence about the bonus of £10,000, reduced to £4,000 was credible and demonstrated that the Claimant was not seeking to inflate his claim.

Applying the facts to the law

63. The question of "worker" status was recently considered by the Supreme Court in the case of Uber BV v Aslam, as set out in the IDS Employment Law Handbooks as follows: "the Court stressed the importance of interpreting S.230(3) ERA in light of the purpose of the legislation, which is to give protection to vulnerable individuals who have little or no say over their pay and working conditions because they are in a subordinate and dependent position in relation to a person or organisation that exercises control over their work. It would be inconsistent with that purpose to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of worker. Tribunals should consider the language of the correspondence between the parties, the way in which the relationship has operated, and any evidence of the parties' intentions to determine whether the relationship gives rise to 'worker' status under the legislation. While written terms may, depending on the other evidence, be

understood to be an accurate record of the parties' rights and obligations, there is no legal presumption that a contractual document contains the true agreement just because an individual has signed it."

64. There was no written contract of employment in this case. I had before me sufficient evidence of the communications between the parties and actions undertaken by both parties to demonstrate that there was a contract of employment by which the Claimant was employed to carry out the role of Vice President at Coanda. The Claimant believed he was employed. He had sought re-assurance about this from Mr Andrews who was the President of the company and the person who directed many aspects of his work.
65. The Claimant and Mr Andrews had agreed a package of remuneration for the Claimant's employment, the full terms of contract were to be finalised later, once HR and payroll were properly setup. The Claimant left employment before receiving any payments and the Respondent owed him wages. The Claimant did not agree to volunteer his services and no alternative contractual arrangement that would preclude the Claimant from being a worker was ever discussed or agreed upon. The Claimant was treated as Mr Andrews' subordinate, checking in with completed work or about incomplete tasks. He was personally responsible for providing services to the Respondent. The nature of the correspondence demonstrates that the Claimant was a worker.
66. The Claimant was therefore a worker for the purposes of s230(3) ERA 1996.
67. As a "worker", in accordance with ERA 1996 s 13, the Claimant has the right not to suffer an unlawful deduction from his wages.
68. In considering the facts and circumstances of this case, I determined that the wages, properly payable, as best could be identified from the evidence provided, related to the period 9th November 2023 to 26th February 2024. The Claimant received no wages during this period. The bonus was also an amount that was properly payable to the Claimant from the outset of his employment contract as a sign-on bonus, payment for committing himself to the company. Again, this was not paid to the Claimant.
69. There was no evidence that the deduction from wages amounted to contractual deductions, excepted deductions or had been authorised by the Claimant. I found that the Respondent had simply failed to pay the Claimant the wages that he was entitled to receive.
70. I therefore concluded that the Claimant's complaint of unauthorised deductions from his wages was well founded, and I awarded the Claimant the full amount sought, being £39,619.00 (the gross amount owed).

Employment Judge McGregor

Date 1st October 2024

