



# EMPLOYMENT TRIBUNALS

**Claimant:** Chelsea Shelton

**Respondent:** Q Care Assist Limited

**Heard at:** Nottingham Tribunal (by video)

**On:** 16 August 2024

**Before:** Employment Judge N Wilson

## Appearances

For the claimant: Ms C Shelton

For the respondent: Ms A Quraishi

# JUDGMENT

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 9 February 2024 until 27 February 2024.
2. The respondent shall pay the claimant £756 (seven hundred and fifty-six pounds) which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.
3. The complaint of breach of contract in relation to notice pay is not well founded and is dismissed.

# REASONS

**This decision was handed down and explained orally to the parties on 16 August 2024. The request for written reasons was made by the respondent on 27 August 2024 received by the Judge during a period of leave. I therefore apologise for the delay in providing these written reasons.**

## Background

1. The claimant was employed by the respondent, a home care provider, as a care assistant from 4 December 2023 until 28 February 2024. Early conciliation started on 1 March 2024 and ended on 21 March 2024. The claim form was presented on 25 March 2024 (in time).
2. The claim is about Notice Pay and Unauthorised Deduction from Wages.
3. The respondent's defence is the claimant should have given 2 weeks notice pursuant to her employment contract. The claimant handed in her notice on 26 February 2024. It is asserted that in line with the 2 week notice period her last day of work should have been 11 March 2024 but the claimant left on 28 February 2024 without completing her 2 week notice period.
4. The claimant states she left as the respondent had deducted wages for the period of February 2024, which she had already worked, from her pay on 27 February 2024. The respondent states once she handed in her notice it was usual policy to not pay the notice period wages until the notice period had been completed to ensure staff did not leave without completing the notice period owed.
5. The respondent accepts they deducted 2 weeks pay from the claimant's 27 February 2024 pay for the work she did for the preceding two-week period.
6. The claimant calculates and claims this loss to amount to £756. The sum is not disputed. It is a gross sum.
7. The claimant also asserts the respondent did not pay her her two weeks notice.
8. No one raises employment status but in light of the contract referring to the claimant as 'self employed' I addressed this issue with the parties and heard evidence about the reality of the working relationship.

9. Section 230(3) of the Employment Rights Act 1996 (ERA) defines a ‘worker’ as an individual who has entered into or works under (or, where the employment has ceased, worked under):
- a contract of employment (‘limb (a)’), or
  - any other contract, whether express or implied and (if 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 (‘limb (b)’).
10. For the purposes of this definition, a contract of employment is defined as ‘a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing’- Section 230(2) ERA
11. I heard sworn evidence from the claimant and Ms Quraishi (Director) on behalf of the respondent. There was no hearing bundle, but I considered the documents filed by both parties in support of the claim and response.

**Findings of fact and conclusions:**

12. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. I have carefully considered all the evidence referred to and the oral evidence given at the hearing even if I do not mention it. I will only refer to such of the oral evidence as is necessary to explain my decision.
13. It is not necessary to imply a contract in the circumstances of this case as there is a written contract entered into between the parties dated 15 February 2024.
14. The contract clearly states the work has to be carried out by the ‘named self employed appointed’ (in this case the claimant) and they may not sub contract work to someone else without the agreement of the respondent.
15. I find there was an obligation on the claimant to provide her services personally because it was accepted by the respondent in evidence the claimant could not send someone else to provide her services due to legal and regulatory obligations. There was no right of substitution.
16. I find the claimant did not choose where and when she worked, albeit she provided her availability to work, once work was allocated to her she was expected to ‘turn up’. Work is allocated by the respondent on a rota via an app up to a period of approximately 3 weeks. The respondent confirms the claimant is not at liberty to deliver/provide the care to the client as she deems fit. The care industry is understandably regulated and the respondent therefore sets out the

care plan (in consultation with others as appropriate – but not the claimant) and the claimant is expected to follow that care plan and implement it.

17. The respondent provided any necessary personal protective equipment (PPE) for the job to the claimant but it is available free of charge.
18. Training is provided by the respondent to the claimant. The respondent confirms there is a legal and regulatory requirement to do so.
19. Whilst the respondent asserts the claimant can refuse to work without any issue it is clear from the evidence heard that the only real example of this given was when the claimant was unable to work due to ill health. In addition, it is notable the respondent provides the claimant with a free driver service to ensure they are able to attend their allocated clients. The respondent allocated the clients to the claimant, and she was expected to perform her services for them in accordance with the respondent's devised care plan, and the respondent was obliged to pay her for doing so.
20. I therefore find there was sufficient control over the claimant and her work by the respondent. The contract represents the true intention of the parties.
21. I find the claimant entered into work under a contract with the respondent and had agreed to personally perform some work or service to the respondent.
22. I heard no evidence that the respondent was a client or customer of the claimant.
23. Having considered all relevant factors, I am satisfied the claimant had worker status at the material time.
24. In relation to the unauthorised deduction from wages it is not in dispute that the respondent withheld pay for 2 weeks work already undertaken by the claimant from her February 2024 pay which was paid on 27 February 2024. The respondent relies on the service contract entered into by the claimant and the staff handbook as permitting them to make this deduction. The claimant handed in her notice on 26 February 2024 and had started to work her notice but left on 28 February 2024 once she noted her wages for February 2024 had been deducted by 2 weeks pay without her prior knowledge. The respondent did not inform the claimant prior to the deduction that it was to be made.
25. The respondent relies on the contract permitting them to do so as well as the staff handbook.
26. I find the claimant had read the contract but not the staff handbook which the respondent states gave the right to withhold pay during any notice period.

27. Neither the contract nor the staff handbook contain any express term that upon an employee handing in their notice the employer will deduct pay for a previous pay period already worked, for the sum equivalent to their notice period. In this case that would be 2 weeks notice equating to 2 weeks wages.
28. The respondent seeks to persuade me the termination clauses in the staff handbook and the contract imply this. I do not find there is any express or implied term within either the service contract or the staff handbook which states the respondent will deduct wages upon an employee or self employed person handing in their notice to cover the notice period.
29. The clause Ms Qurashi relies on is the clause relevant to 'terminating without giving notice' however it is accepted that the claimant gave the required notice. The reason she did not work the notice period is due to the alleged unauthorised deduction for the previous pay period. The reason for her leaving without completing her notice period is not disputed by the respondent in their response to the claim. Whilst Ms Qurashi seeks to persuade me the claimant had no intention of completing her notice period there is simply no cogent evidence to support this. I accept the claimant's evidence on this point.
30. Much was made of why the claimant did not accept the respondent would have paid her had she completed her notice period but the pay which was deducted was for a previously worked period in relation to which the claimant states there was no basis for the respondent to be able to lawfully deduct those wages.
31. Whilst I sympathise with the respondent for the position it may then find themselves in with people not working their notice period, an employer shall not make a deduction from wages unless that deduction is required or authorised by virtue of a statutory provision or a relevant provision in the workers contract or with prior agreement or consent by the worker pursuant to section 13 of the Employment Rights Act 1996 ('ERA') The respondent relies on a contractual right to do so. I do not find there was any such express or implied contractual provision authorising the deduction. I accept the claimant's evidence she was not made aware of the deduction, nor had she agreed to it prior to the deduction.
32. On the basis it is agreed the claimant's last pay had 2 weeks wages withheld from it for work already undertaken I find the claimant's claim for unauthorised deductions from wages is well founded and the respondent is ordered to pay her the sum of £756.
33. In relation to notice pay I accept the respondent's position that the claimant did not complete the notice period and the service contract does give the respondent the right to deduct costs during that period. As the claimant did not complete the notice period and has not established those sums being claimed for notice pay were outstanding and due to be paid to her, no sums are ordered to be paid in respect of notice pay and I find the claim for notice pay is not well founded and is dismissed.

**Public access to employment tribunal decisions**

All judgments and written reasons for the judgments (if provided) are published in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the parties in a case.

**Employment Judge N Wilson**

**Dated: 15 October 2024**

Sent to the parties on:

...16 October 2024.....

For the Tribunal Office:

.....