Case No: 6007243/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr Laine Brockwell

Respondent: Dyke Alehouse Limited

Heard at: London South**,** by CVP

On: 22 January 2025

Before: Employment Judge Yardley (sitting alone)

Representation

Claimant: In person

Respondent: Mr M Williams, Counsel

JUDGMENT

It is the Judgment of the Tribunal that the Claimant was not an "employee", nor a "worker" of the Respondent within the meaning of s.230 Employment Rights Act 1996. The Tribunal therefore has no jurisdiction to hear the Claimant's complaints of unlawful deduction of wages and holiday pay and are dismissed.

REASONS

Introduction

1. Mr Brockwell ('the **Claimant**') was a director and shareholder of Dyke Alehouse Limited ('the **Respondent**') The Claimant claims that he is owed sums in respect of unpaid wages, holiday pay and compensation for stress caused.

2. ACAS was notified under the early conciliation procedure on 11 July 2024 and the certificate was issued on 15 July 2024. The ET1 was presented on 31 July 2024. The ET3 was received by the Tribunal on 28 August 2024.

Claims and Issues

3. The Claimant has bought claims for unlawful deduction of wages and holiday pay. Such claims may only be bought by a person who is either an employee or a worker. The Claimant's position is that he was an employee of the Company.

4. The Respondent's position is that the Claimant was not an employee or worker and was a self-employed partner in the Respondent's business.

5. The list of issues was confirmed at the outset of the hearing as follows.

    5.1. Was the Claimant an employee of the Respondent within the meaning of section 230 of the Employment Rights Act 1996, or alternatively, was the Claimant a worker of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

    5.2. If it is determined that the Claimant is an employee or a worker of the Respondent, did the Respondent make unauthorised deductions from the Claimant's wages and/or fail to pay the Claimant for annual leave that the Claimant had accrued but not taken when their employment ended?

Procedure, Documents and Evidence

6. The Claimant was unrepresented and appeared as a litigant in person. The Respondent was represented by Mr Williams.

7. The Tribunal was provided with a bundle of 65 pages. The Tribunal was also provided with a witness statement from the Respondent. The Claimant did not provide a witness statement.

8. The Claimant explained that the reason he had not provided a witness statement was because he did not think he needed to and that a witness statement was only required from a third party witness. On the basis that the Claimant was an unrepresented litigant in person, the Tribunal agreed that the Claimant's ET1 would serve as his evidence-in-chief. Mr Williams did not raise any objections and confirmed that he intended to ask the Claimant some confirmatory questions regarding his claims during cross-examination.

9. The Claimant also said that he had not received a copy of Mr Farmer's witness statement. Mr Williams noted that it had been sent to the Claimant at the same time as the Tribunal prior to the hearing but the Claimant claimed he did not have the password. Acknowledging that the Claimant is an unrepresented litigant in person, the Tribunal adjourned for 30 minutes to enable the Claimant time to read the witness statement and prepare questions to put to Mr Farmer.

10. The Tribunal heard evidence from Mr Brockwell, the Claimant and Mr Farmer, the other Director and Shareholder of the Respondent.

11. After the evidence was called, the Tribunal heard brief closing submissions from both parties.

12. Following closing submissions, the Tribunal permitted the Claimant, with the Respondent's consent, to introduce two pages of text messages regarding the Claimant's claim for holiday pay in evidence.

13. Prior to the Tribunal adjourning the hearing to consider its decision, Mr Williams on behalf of the Respondent made an open offer to settle proceedings. This was rejected by the Claimant.

14. The Claimant, following the delivery of the oral judgment, raised multiple objections concerning the Tribunal's factual findings and requested written reasons for the decision. In these written reasons, the Tribunal has sought to address the Claimant's concerns.

Preliminary Matters

15. At the outset of the hearing, the parties agreed that the correct Respondent was Dyke Alehouse Limited and the name of the Respondent was amended accordingly.

Findings of Fact

16. The relevant facts are as follows. Where the Tribunal has had to resolve any conflict of evidence, this is indicated at the material point.

Relationship between the Claimant and the Respondent

17. The Respondent is a public alehouse and commenced trading in November 2021. Mr Farmer became a director of the Respondent on 10 December 2023 and at the time owned 100% of the shares.

18. The Claimant commenced work for the Respondent on 13 November 2024. He was appointed as a director of the Respondent on 19 December 2023 and subsequently acquired a 20% shareholding in the business.

Discussions regarding pay

19. During the initial meeting to discuss a proposed partnership between the Claimant and Mr Farmer, Mr Farmer said it was orally agreed that the Claimant would work on a self-employed basis and would invoice the Respondent for his pay. The Claimant denied this and said he did not choose to be self-employed for tax purposes or for an easier working relationship, emphasising that he saw no advantage in being self-employed.

20. The arrangements regarding C's relationship with the Respondent are set out in a Partnership Agreement dated 19 December 2023. Amongst other things, the Partnership Agreement sets out the following relevant terms:

    20.1. That in return for a 20% share in the business valued at £10,000, the Claimant shall work for the Respondent for a period of 4 months, from 13 November 2023 to 11 March 2024;

    20.2. That after the initial 4 month period, the Claimant will be paid a salary of £2,500;

    20.3. That the Claimant will work an average of 48 hours per working week;

    20.4. That if the Claimant decides to leave the business, he will be required to give a minimum of 3 months' notice;

20.5. That the Claimant will be responsible for the day to day running of the public house and that Will Farmer will be involved with administration and accounting but that certain business decisions must be agreed by both the Claimant and Will Farmer;

20.6. That the Claimant will be appointed as a company director and share all "financial reasonability". The Tribunal has taken that this should be read as "financial responsibility".

21. Other than the Partnership Agreement, the Claimant was not provided with a separate contract of employment. Although the Claimant disputes this and says that he was provided with a contract of employment, a copy of the contract was not produced to the Tribunal and therefore the Tribunal does not find that a written contract of employment existed.

22. The Partnership Agreement did not contain any terms regarding the payment of overtime and it was accepted that the Claimant would work in excess of 48 hours as required. The Tribunal was provided with a copy of an exchange of undated messages between the Claimant and Mr Farmer where the Claimant suggested that any hours worked over 55 hours per week should be overtime and paid at a rate of £15 per hour in cash. The Tribunal has not seen any evidence of Mr Farmer's response to this and accordingly finds that no arrangement for the payment of overtime existed or was agreed.

The parties role in the business

23. In addition to his role as a director, the Claimant's role in the business was to manage the day to day running of the alehouse including the staff. He typically worked around 48 hours a week and was free to set his own hours provided that the business ran properly and at the agreed opening times. Despite this, the Claimant was free to close the business early when he felt it necessary and did not require permission for this. The Claimant also worked as a chef. He was solely responsible for ordering stock and provided his own chef whites.

24. Mr Farmer was primarily responsible for managing the Company bank account, accounting and bookkeeping, however the Claimant had access to a credit card and was free to use this as necessary.

25. Decisions regarding the menu and drink selection were made jointly with Mr Farmer. Decisions regarding staff costs and high-level decisions, such as hiring, were also made together. However as the majority shareholder, there were occasions were Mr Farmer would made the final decision, for example, the decision to end the Partnership Agreement.

Holiday

26. The Partnership Agreement did not contain any terms regarding holidays.

27. It is accepted that there were no formal written arrangements regarding the booking or taking of holiday. The Claimant would ensure that the Respondent was aware when he was taking holiday, typically confirming this by text message. The Claimant did not otherwise keep a record of the holiday he had taken and assumed that the Respondent was maintaining a record.

28. The Tribunal was provided with an exchange of messages between the Claimant and Mr Farmer on or around 30 March 2024 concerning payment for holiday

29. The Claimant sent a text message to Mr Farmer at 13:10 stating:

"*Also what would you like to do about my holidays. I think it's about 12 days, do you want me to take it or would you rather pay me for it.*"

30. Mr Farmer replied:

"*Leave wise we would just need to calculate what you've had and what owing and you get the difference*".

31. The text messages are ambiguous, and from the extracts provided to the Tribunal, the context of these discussions is unclear. Furthermore, the messages do not contain any evidence of a direct agreement regarding the Claimant's holiday arrangements. Neither do they confirm the Claimant's understanding of what he believed he was owed at the date of termination, which occurred approximately two months after these messages were exchanged.

32. In conclusion, the Tribunal finds as a fact that there were no agreed arrangements regarding the taking or payment of holiday.

Additional hours worked on 30 January 2024

33. On 30 January 2024, a delivery was due to be made to the Respondent by Albion that was delayed. The delivery was delayed and the Claimant waited for the rescheduled delivery.

34. The Claimant says that Mr Farmer confirmed that he would ensure that Albion paid for the Claimant's additional time in waiting for the delivery. The Claimant also said that the Respondent was compensated by Albion with a barrel of beer for the delay. The Respondent on the other hand said that the Claimant arrived late for the original stock delivery and this was why the delivery was rescheduled. He does not accept that there was agreement to compensate for the Claimant's time in waiting for the rescheduled delivery.

35. For the reasons set out in paragraph 22 above, the Tribunal does not find that any additional payment was due to the Claimant in consideration for the time spent waiting for the delivery. The Claimant was already compensated by way of a shareholding in the business and a share of the profits.

Hours worked from 12 March 2024 following expiry of the initial 4 month period

36. On 4 April 2024, the Claimant submitted an invoice for his time worked during the month of March in the sum of £1,250. This amount was paid by the Respondent.

Hours worked in April 2024

37. On 28 April 2024, Mr Farmer asked the Claimant by way of text message if he would prefer to invoice for the month of April or go on payroll. The Claimant did not reply to this message.

38. On 8 May 2024, the Claimant submitted an invoice in respect of the period from 1 April 2024 to 30 April 2024 in the amount of £2,500.

Additional hours claimed from 13-15 April 2024

39. The Claimant claimed per his ET1, that he had worked two additional days from 13 to 15 April 2024, which were not accounted for in his monthly wage. During cross-examination, the Claimant acknowledged that the dates provided in the ET1 were incorrect and clarified that he intended to claim for two additional days worked on 13 and 14 November 2023. The Claimant also accepted that he had been fully paid for all hours worked in April 2024 and the Tribunal made no further finding on this point.

Termination of the relationship

40. At some point in May 2024, the relationship between the parties broke down and it was agreed that the Claimant would cease working for the business on 19 May 2024. The Claimant's appointment as a director was officially terminated on18 May 2024.

41. Following the termination of the working relationship, the Claimant did not submit an invoice for the work undertaken in May 2024 up until his termination.

42. The Respondent acknowledges that the Claimant is entitled to payment for this period but said he is waiting for the Claimant to submit an invoice including a record of the hours worked in accordance with their established practice before this can be paid.

The Law

43. Section 230 Employment Rights Act 1996 ("ERA") sets out the definition of "employee" and "contract of employment":

"(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."

44. Section 230(3) ERA sets out the definition of "worker":

(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."

45. Mr Williams referred to the following cases in submissions:

45.1. In **Clark v Clark Construction Initiatives Ltd and anor 2008 ICR 635, EAT**, the EAT upheld an employment tribunal's finding that the controlling shareholder, was not also an employee and laid down factors that a tribunal faced with deciding whether a majority shareholder has 'employee' status might find helpful; and

45.2. In **Tiffin v Lester Aldridge LLP 2012 ICR 647, CA**, the Court of Appeal confirmed the proposition that a partner cannot be an employee of a partnership.

46. The Tribunal also considered the significant body of case law in relation to employment status. In particular:

46.1. In **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1967] 2 QB 497**:

"A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service…'

As to (ii). Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time and the place where it shall be done. All these aspects of control must be considered in whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted…"

46.2. The case of **Bradley Rainford v Dorset Aquatics Limited EA-2020-000123-BA** (previously UKEATPA/0126/20/BA) involved brothers who were co-directors and 40/60 shareholders in the respondent. The claimant worked as site manager and both brothers were each paid, on the advice from accountants, an equal "salary" agreed between them (latterly £1,500 per month) and had PAYE and NI deducted/paid in respect thereof. They also agreed between them on the amount of dividends to be paid at the end of the year in accordance with their shareholdings. The EAT upheld the Tribunal's decision that the claimant was not an employee or a worker for the purposes of s 230 of ERA 1996. Per HH Judge Shanks:

"From Clark and Neufeld (see: paras [79] to [90] in particular) we take the following propositions in relation to the question whether a director/shareholder is also an employee of a company (which are likely to apply equally to the wider concept of "worker"):

(1) There is no reason in principle why someone who is a shareholder and director of a company cannot also be an employee, even if the person has total control over the company;

(2) Whether the shareholder/director is an employee is a question of fact for the tribunal;

(3) In cases where matters have been dealt with informally it may be a difficult question as to whether the correct inference is that the shareholder/director was truly an employee;

(4) In considering the issue it will be necessary in particular to consider how the parties have conducted themselves, what they have actually done and how they have been paid;

(5) Where the conduct of the parties is inconsistent with the existence of a contract of employment or is in some areas not governed by such a contract, that will be an important factor pointing away from a finding that the shareholder/director is an employee;

(6) It follows that the lack of any written employment contract or other record thereof, is likely to be an important consideration;

(7) The fact that the shareholder/director has control of the company or that his personal investment in it will stand to prosper with the company will be "part of the backdrop" but will not ordinarily be relevant to the issue and can and should therefore be ignored (see: Neufeld para [86])."

Conclusion

47. Determining the employment status involves complicated legal concepts that are not familiar to many in the legal profession, never mind to lay-people. When determining employment status, the Tribunal is reminded of the importance of using a factual, multi-faceted approach. This includes evaluating factors such as the level of control over the individual's responsibilities and their degree of integration into the organisation.

The Partnership Agreement

48. The relationship between the parties was governed by a written partnership agreement (the **Partnership Agreement**). This agreement specified that the Claimant would initially be compensated through a shareholding in the business. Such an arrangement is atypical of a conventional employer-employee relationship, where remuneration is ordinarily provided in the form of financial payments rather than equity.

49. The Partnership Agreement outlined that, following an initial four-month period, the Claimant would receive a fixed monthly payment of £2,500, participation in a 50/50 profit-sharing scheme, and the opportunity to increase his shareholding. It did not provide for any additional payments beyond the agreed profit share or the monthly £2,500 gross figure. Furthermore, it made no reference to standard employment entitlements such as holiday pay, sick pay, or the existence of disciplinary and grievance procedures—elements typically associated with an employment relationship.

50. While the presence of a Partnership Agreement does not, in itself, preclude the existence of an implied contract of employment, the nature of the agreement, the absence of traditional employment benefits, and the profit-sharing structure all indicate an intention between the parties to enter into a collaborative business arrangement rather than an employer-employee relationship.

51. The Tribunal also considered the fact that the Claimant was a minority stakeholder and a director within the company. His financial interests were directly tied to the company's success through the profit-sharing mechanism. This arrangement suggests a level of entrepreneurial risk more aligned with a business partnership or self-employment, rather than the financial security expected in an employment relationship.

Absence of Employment Contract

52. The Tribunal considered the absence of a signed employment contract as a significant factor in assessing the Claimant's employment status. Both the Claimant and Mr Farmer acknowledged that there were five other members of staff, all of whom had formal employment contracts and were paid via PAYE. In contrast, the Tribunal did not find that the Claimant had a written employment contract, and suggests that the parties did not intend to create an employer-employee relationship.

53. The Tribunal also noted that the Claimant relied on informal agreements and text messages to confirm holidays. This contrasts with the structured process typically found in employment relationships, where leave entitlement and holiday booking procedures are documented in the employment contract. The Claimant stated that he expected the Respondent to keep track of his holidays, yet he accepted that there was no formal process for him to request or record his leave.

54. The Tribunal acknowledges that informal working arrangements of this nature are not uncommon in small businesses and, in isolation, are not necessarily conclusive of self-employment. However, the fact that all other staff members had formal employment contracts and required approval for holiday while the Claimant did not is an important consideration. This distinction indicates that the Claimant's working relationship with the Respondent differed from that of an employee and aligns more closely with that of a business partnership.

55. Weighing these factors together, the Tribunal finds that the absence of a formal employment contract, the Claimant's reliance on informal communications, and the lack of structured holiday entitlements collectively points towards the Claimant being a self-employed contractor rather than an employee.

Mutuality of Obligation

56. The Tribunal considered the requirement of mutuality of obligation, a key element in establishing a contract of employment, as set out in **Ready Mixed Concrete**. The Tribunal found as a matter of fact that the Claimant did not receive any payment during the first four months of his engagement with the Respondent, rather he received a 20% shareholding in the business. Thereafter, he received payments of £2,500 per month, in addition to a share in the profits and the opportunity to increase his overall shareholding.

57. The Tribunal recognises that the presence of regular monthly payments might suggest an element of financial commitment akin to employment. However, these payments were not structured as a salary but were accompanied by additional profit-sharing arrangements, which are more typical of a business partnership or self-employed engagement rather than an employment relationship.

58. On balance, the Tribunal found that the Claimant and Mr Farmer intended to enter into a commercial arrangement where both parties would share in the profits of the business. This structure is inconsistent with a traditional employer-employee relationship, where an individual is entitled to a fixed salary regardless of business performance.

59. Accordingly, the Tribunal does not find that there is sufficient mutuality of obligation to establish an employment contract. The absence of guaranteed remuneration in the initial months, the profit-sharing mechanism, and the opportunity to acquire a larger stake in the business collectively indicate that the Claimant was engaged on a self-employed basis rather than as an employee.

Invoices for Payment

60. The Tribunal noted that in March and April 2024, the Claimant submitted invoices for payment. These invoices were paid gross, without deductions for tax or National Insurance. This method of payment is a common feature of self-employment, where the individual assumes responsibility for managing their own tax affairs, rather than the employer deducting tax at source under PAYE.

61. The Claimant asserted that the reason he submitted invoices was to assist the Respondent's accounting and bookkeeping. He explained that he had concerns regarding the Profit & Loss statement, which showed a significant increase in "Hours Worked" in January 2024 despite a reduction in staff numbers. However, he also acknowledged that he had not paid tax on the amounts received from the Respondent, stating that he believed it was the Respondent's responsibility to handle any employment-related tax liabilities.

62. The Tribunal was not persuaded by the Claimant's explanation and found no credible justification for the assertion that issuing invoices would have simplified the Respondent's accounting or bookkeeping obligations. The Tribunal considered that the submission of invoices, rather than receiving payments via payroll, was more consistent with an independent contractor arrangement rather than an employment relationship.

63. Furthermore, the Tribunal was satisfied that the Claimant understood the fundamental difference between employment and self-employment. He confirmed that in his previous role, he had been paid via PAYE, meaning he was familiar with receiving net payments accompanied by a payslip, rather than submitting invoices.

64. The Tribunal also placed weight on the fact that the Claimant was directly asked whether he wished to be transferred onto the Respondent's payroll or continue invoicing. While he did not provide a direct response to this communication, his subsequent action—submitting a further invoice—strongly indicated that he intended to continue invoicing the Respondent rather than be paid via PAYE as

an employee. This conduct is a relevant factor to support the assertion that the Claimant accepted his status as self-employed.

Control

65. The Tribunal acknowledges that, in principle, an individual who is both a shareholder and a director of a company can also be an employee. However, in determining the Claimant's employment status, the Tribunal has considered not just the contractual documents but also how the parties conducted themselves in practice.

66. It was undisputed by both parties that the Claimant exercised significant autonomy in managing the day-to-day operations of the pub. Additionally, it was accepted that key business decisions, such as the hiring of staff, were made in consultation with Mr Farmer rather than being dictated by the Respondent in the manner typically expected in an employment relationship.

67. The Claimant's position was further distinguished from that of a standard employee by his dual role as General Manager/Chef and his legal status as a director and minority shareholder of the Respondent. This directorship afforded him a greater degree of control over the company's operations compared to an ordinary employee who would be expected to work under the employer's authority and direction.

68. On balance, the Tribunal does not find that the Claimant was working under the control of the Respondent in a manner indicative of an employment relationship. Instead, the evidence supports the conclusion that the Claimant had substantial control over his working hours and holiday arrangements and was jointly responsible for major business decisions. Furthermore, his financial interest in the company, through both profit-sharing and shareholding, suggests that his motivation for carrying out these tasks was not as a subordinate employee but rather as an individual with a vested commercial interest in the success of the business.

69. Accordingly, the Tribunal finds that the Claimant exercised a level of control and financial interest that is inconsistent with traditional employment and aligns more closely with that of a self-employed contractor.

Personal Service

70. Although this issue was not specifically raised by either party, the Tribunal has considered the question of personal service as part of its assessment of the Claimant's employment status. In the absence of a formal contract of employment, determining whether personal service was a requirement or whether the Claimant had a right of substitution presents some difficulty.

71. On balance, the Tribunal finds that there was no strict requirement for the Claimant to provide personal service. There was no evidence to suggest that the Claimant was the only individual who could perform the duties associated with his role, nor was there any indication that the Respondent imposed an obligation on him to personally carry out the work. The Tribunal reached this conclusion based on the Claimant's own admission that, when he was absent from work or on holiday, other employees were able to step in and fulfil his responsibilities.

72. The ability to delegate or substitute work is a strong indicator of self-employment, as an employee would typically be contractually obligated to provide personal service. While the Claimant may have played a key role in the business, the fact that his duties could be covered by others, yet he would still participate in the profit sharing, suggests that he was not engaged under a contract of employment but rather in a capacity more akin to that of an independent contractor.

73. Considering these factors in conjunction with the wider circumstances of the working arrangement, the Tribunal finds that the Claimant's lack of an obligation to provide personal service further supports the conclusion that he was a self-employed contractor rather than an employee.

The Claimant's Intentions

74. Finally, the Tribunal considered the Claimant's submission that he could not have intended to be self-employed, as he was in the process of purchasing a property with his partner and required three months' worth of payslips to secure a mortgage. While the Tribunal acknowledges that mortgage requirements can influence an individual's preference for an employed status, this is not, in itself, determinative of the legal nature of the working relationship and the Tribunal must assess employment status based on the reality of the working relationship, rather than the Claimant's financial needs or preferences.

75. Further, the Tribunal notes that the Claimant agreed to work for a four-month period without pay or the receipt of payslips. This is inconsistent with the expectations of an employee, who would ordinarily receive a regular salary with appropriate deductions for tax and National Insurance. The Claimant's willingness to work under these conditions suggests that he accepted a working arrangement outside the traditional employer-employee framework.

76. Accordingly, the Tribunal does not find the Claimant's submission to be a persuasive factor in determining his employment status. Instead, the Tribunal concludes that the overall nature of the arrangement, including the absence of payslips, the lack of guaranteed remuneration in the initial period, and the broader working relationship, supports the conclusion that the Claimant was engaged as a self-employed contractor rather than an employee.

Tribunal's Conclusion on Employee Status

77. The Tribunal concludes, having taken all of the above factors into consideration, that the Claimant was not an employee of the Respondent within the meaning of section 230(1) ERA. In reaching this conclusion, the Tribunal has looked at the reality of the relationship between the Claimant and the Respondent and considers it a business agreement with a view to sharing in the profits of the business.

78. The Tribunal also considers that the Claimant's adoption of employment status is a belated one and not reflective of his genuine views at the time he was involved in the Company.

Tribunal's Conclusion on Worker Status

79. The Tribunal also does not consider that the Claimant was a "worker" within the meaning of section 230(3). It has not been suggested that the Claimant is a client

or customer of any profession or business undertaking carried on by him and so that part of the test is not relevant.

80. Further, for the same reasons as set out above, there was little or no control over the Claimant by the Respondent, the Claimant shared the risk and reward of the business with his co-director and shareholder and there was no requirement for personal service.

81. For these reasons the Tribunal finds that the Claimant was neither an employee or a worker and the evidence presented aligns more closely with that of a self-employed contractor. Accordingly, the Tribunal has no jurisdiction to hear his claims and there are therefore dismissed.

Alternative Conclusion

82. Even if the Tribunal is mistaken in its conclusion that the Claimant was neither an employee nor a worker (which it does not find to be the case), based on the above findings, the Claimant is not entitled to the sums claimed for the following reasons:

82.1. Any hours worked by the Claimant on 30 January 2024 fell within the initial four-month period, during which the Claimant was remunerated through an equity shareholding in the business and a profit share under the Partnership Agreement. Furthermore, it is noted that there were no arrangements in place for the payment of overtime, as acknowledged by the Claimant. Accordingly, no further payment is owed to the Claimant.

82.2. The Claimant's claim for work carried out on 13 and 14 November 2023 was not included in the ET1 form and, in any event, is out of time as it was not brought within the statutory three-month time limit. Even if the Tribunal were to accept an amendment to the claim and/or grant an extension of time (which was not the case), the dates in question fell within the initial four-month period, during which the Claimant was compensated through an equity shareholding. Moreover, the Claimant's claim falls within the dates set out in the Partnership Agreement for which the Claimant was compensated by way of a 20% shareholding.

82.3. The Claimant failed to provide evidence to substantiate the number of holiday days he claimed had accrued by the date of termination. In his ET1, the Claimant stated: *"I estimate that I am owed 8 days of holiday, which totals £923.04."* In his oral evidence, the Claimant was unable to confirm the precise number of holiday days he believes he is owed, stating that his only supporting evidence consists of text messages submitted to the Tribunal. Upon reviewing these text messages, they do not provide sufficient details of the dates on which the Claimant took holiday during the relevant period, rather they evidence the Claimant asking if he should take 12 days holiday. Therefore, even if the Tribunal had found that the Claimant was an employee or a worker, it is unable to determine what, if any, holiday was taken during the relevant period and, consequently, what sum, if any, remains outstanding. The Claimant has therefore failed to discharge the burden of proof.

82.4. The Claimant's claim for compensation of £500 for stress allegedly suffered as a result of the non-payment of the sums claimed is refused on the basis that compensation for injury to feelings or stress is not available for claims relating to unlawful deduction of wages or holiday pay.

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Employment Judge Yardley

Date: 8 February 2025

12 March 2025

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Sent to Parties.