



# EMPLOYMENT TRIBUNALS

**Claimant:** Kerri Morgan

**Respondents:** R1: Kreative Holdings Limited  
R2: Kreative Tech Limited  
R3: Fresh (Darlington) Limited

**HELD AT:** Newcastle **ON:** 7<sup>th</sup> February 2025

**BEFORE:** Employment Judge Booth

## REPRESENTATION:

**Claimant:** Failed to attend

**Respondents:** Failed to attend

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unauthorised deductions from wages contrary to Part II Employment Rights Act 1996 is not well-founded and is dismissed.
2. The complaint in respect of failure to pay holiday pay in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations is not well-founded and is dismissed.
3. The complaint in respect of failure to provide a written statement of employment particulars in accordance with section 1 Employment Rights Act 1996 is not well-founded and is dismissed.

# REASONS

1. The claimant brings a complaint on the basis that she was an employee or worker of one or more of the respondent companies (all companies in which the claimant's husband Mr Steve Morgan is a statutory director). The respondent disputes the claim and asserts that the claimant was neither an employee or worker of any of the respondent companies.
2. Neither party attended the hearing on 07.02.2025. The Tribunal was able to make contact with the claimant by telephone. The claimant stated that she was not coming to the hearing because she "could not see the point" in attending.
3. The Tribunal notes that these proceedings have been postponed on two occasions at the request of the parties, the Notice of Hearing was sent out on 14.12.2024 to all parties at their last known addresses, and there has been no response from any of the parties to either the Notice of Hearing or the Tribunals' communications requesting confirmation that case management orders have been complied with.
4. The Tribunal concluded that the parties had had reasonable notice of the hearing and that no satisfactory reason for non-attendance was provided. The Tribunal therefore determined to proceed with the hearing in the parties' absence in accordance with Rule 47 of the Employment Tribunal Procedure Rules 2024.
5. For the claimant to pursue her claim, she must first demonstrate that, on the balance of probabilities, she was an employee or worker of one or more of the respondent companies.
6. It was confirmed in Sejpal v Rodericks Dental Ltd [2022] EAT 91 that the starting point for determining employment status is the wording of the statutory test in section 230 Employment Rights Act 1996 (ERA):

**Section 230(1): "an employee is an individual who has entered into or works under a contract of employment."**

**Section 230(2): "a contract of employment means a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing."**

**Section 230(3): "a worker is an individual who has entered into or works 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 that of client or customer of the individual."**

7. The Tribunal has not been provided with any documentary or witness evidence of the existence of a contract of employment or any other contract between the claimant and any of the respondents, either oral or in writing.
8. Although it appears likely that the claimant did some work in R3's shop(s) from time to time, the Tribunal has not been provided with any documentary or

witness evidence as to the nature of that work, or the terms on which work was carried out. The Tribunal concludes that this is not sufficient information from which to draw a conclusion that the claimant was an employee or worker of R3 and that there are other possible explanations for this arrangement.

9. Although it appears likely that the claimant received a regular payment from one of the respondents, the Tribunal has not been provided with any documentary or witness evidence as to which respondent made such payments, the reasons for such payments or the terms of such payments. The Tribunal concludes that this is not sufficient information from which to draw a conclusion that the claimant was an employee or worker of any of the respondents and that there are other possible explanations for this arrangement.
10. The Tribunal has concluded that the claimant has failed to establish that there was a contract of employment or any other contract in place between her and one or more of the respondents or to adduce any documentary or witness evidence of the true nature of such contract. The Tribunal therefore concludes that the claimant has failed to establish that she was either an employee or a worker of R1, R2 and/or R3 within the meaning of section 230 of the Employment Rights Act 1996.
11. Accordingly, the claimant's complaints fail and are dismissed.

Employment Judge Booth  
07.02.2025

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