



EMPLOYMENT TRIBUNALS

Claimant: Mr B Wilson

Respondent: NewsTeam Group Limited

Heard at: London South (by CVP)

On: 14 February 2025

Before: Employment Judge Harrington

REPRESENTATION:

Claimant: In person

Respondent: Mr J Kennett, Managing Director

JUDGMENT having been sent to the parties on 21 February 2025 and written reasons having been requested, the following reasons are provided:

WRITTEN REASONS

1. The Tribunal held a remote hearing by video (CVP) on 14 February 2025. The Claimant, Mr Kennett and Mr Truscott, the Respondent's Senior Operations Manager, were in attendance.
2. The Claimant's ET1 was received by the Tribunal on 11 March 2024 [6]. The Claimant claimed that he was owed arrears of pay in the sum of £800 and £106.60 for petrol money [69]. In his claim form, the Claimant described himself as an 'Independent Contractor (Newspaper delivery)' [9].
3. In the Tribunal's letter, dated 13 May 2024, Employment Judge Fredericks-Bowyer referred to the following issues,
 1. *Was the Claimant an employee or worker of the Respondent? If not, the Tribunal will not have jurisdiction to hear the claim;*
 2. *If the Claimant was an employee or worker, what wages were properly payable?*

3. *Of those, what was paid and what (if anything) is owed?*
4. As part of his response to this letter, the Claimant repeated his description that he was an Independent Contractor [48].
5. The Respondent's ET3, filed on 11 April 2024, contested the claim on the basis that the Claimant was engaged as a self-employed contractor and not an employee or a worker and that there was no variation to the Respondent's written contract entered into with the Claimant [42].
6. At the Preliminary Hearing, the Tribunal was referred to a hearing bundle paginated 1 - 121 and to witness statements from Mr Truscott, dated 8 February 2025, and Mr Kennett, dated 10 February 2025. References in square brackets in this document are to pages within the hearing bundle. The Tribunal heard oral evidence from the Claimant, Mr Kennett and Mr Truscott. Both parties made submissions.

The Facts

7. The Claimant worked as a delivery driver for the Respondent from 5 December 2023 to 10 February 2024, delivering papers and magazines to customers of the Respondent.
8. The Respondent is a newspaper and magazine delivery company, which provides early morning deliveries to addresses across the UK including individual customers and small businesses.
9. By way of summary, having seen a Newspaper delivery role advertised online, the Claimant applied for the position and, as part of the recruitment process, had four telephone calls with the Respondent's recruitment department on 28 and 29 November 2023.
10. During those telephone calls, the Claimant referred to having already booked a holiday in December 2023 / January 2024. He was told by the recruiters that the position with the Respondent was a self-employed job, that if the Claimant was not available for work he would have to arrange his own cover and that the contract was a contract to provide services as a self-employed contractor [84].
11. A written contract was issued to the Claimant, which he signed and dated on 29 November 2023 [54-58].
12. The contract included the following paragraphs,

Agreement Section –

This is not a contract of employment; this is a contract to provide services as a self-employed contractor and not an employee or worker. The contractor has the full and unfettered right to deploy sub-contractors or assistants to carry out the services.

.....

This Agreement may be modified only by the modification being in writing and signed by both parties.

The services required by this Agreement shall be performed in full by the Contractor, the Contractor's employees, or their contract personnel, and the Client shall not shire, supervise, or pay any assistants to help the Contractor.

Independent contractor status section –

As an independent contractor, the Contractor and the Client agrees, as follows: (1) The Contractor has the right to perform services for others during the term of this Agreement. (2) The Contractor has the full and unfettered right and / or obligation to hire assistants / substitutes / sub-contractors to provide the services required by this Agreement. [54]

Expenses, Vehicles and Equipment –

The Contractor shall be responsible for all expenses incurred while performing services under this Agreement. The Contractor will provide all vehicles, equipment, tools and materials used to provide the services required by this Agreement.

13. Accordingly, the Claimant had to provide his own vehicle and pay for his own expenses including petrol and business insurance. The Claimant had an express and unfettered right to provide a substitute to carry out his round and he was also free to undertake work for other organisations. Furthermore, the terms of this contract included that he was not under the control or supervision of the Respondent, he was responsible for payment of his own tax and national insurance and he was not entitled to payment of holiday or sick pay.
14. The Claimant began working for the Respondent on 5 December 2023. He was carrying out a delivery round in accordance with the orders recorded on the PaperRound app.
15. On 9 December 2023 the Claimant sent a text message to Mr Truscott which included the following,

'I want to give you advance warning that I will be away from 30 December, available to return to work on 9th Jan. Is this ok? (Without any obligation to pay a penalty)' [25, 64]
16. The obligation to pay a penalty referred to the 'Deductions' section in the written contract, whereby financial penalties were imposed if work was not completed [54].
17. On or around 10 December 2025 there was a further text sent by the Claimant to Mr Truscott,

'I had a pre-booked holiday and the NewsTeam recruiter stated that I can let them know in advance and it shouldn't be an issue. I do not know anybody who can cover my rounds for the dates I am away.

I am happy to continue working the rounds but cannot afford to work at a loss. What are my options?' [26, 65]

18. In the event, the Claimant worked from 5 December 2023 until 29 December 2023. During this period, he had handed in his notice on 14 December 2023. The Claimant then resumed work on 9 January 2024 and, in a further message sent on 10 January 2024, he confirmed that he would work until 10 February 2024 [66]. The Claimant received his final payment on 26 February 2024.
19. The Claimant's pay for his final period of work was calculated by the Claimant to have been £935.35. However a deduction of £800 was applied to this last payment, applying the "Deductions" section of the contract (*'..the Contractor will be charged 3 times the normal day rate for each day cover has to be arranged by the client. For clarification this means the contractor will NOT be paid for that day and will eb charged 2 times the day rate.'*) [93].
20. Following a review of the recordings of the telephone calls made with the Claimant as part of the recruitment process, Mr Truscott decided that there had been no agreement made with the Claimant which amounted to a variation of the written terms of the contract. Mr Truscott did not find any evidence that the Claimant had been told that his holiday could be accommodated without charges being imposed under the contract [84, 85]. Accordingly, Mr Truscott confirmed to the Claimant that, in his view, the correct deduction had been applied for the period of time during which the Claimant had been away [27, 67].

The Law

21. Section 230 Employment Rights Act 1996 ("the Act") refers to an employee being an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. 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.
22. Under section 230(3) of the Act, a '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.

(A worker who satisfies this test in sub-paragraph (b) is sometimes referred to as a “limb (b) worker”).

23. Under section 13 of the Act, an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract.
24. The Claimant will therefore need to demonstrate that he is either an employee or a worker in order to be able to bring a claim in respect of unlawful deduction from wages.
25. When considering the question of a claimant’s status, the following cases are relevant:
 - a) Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497;
 - b) Autoclenz Ltd v Belcher and Others [2010] IRLR 70 CA and [2011] UKSC 41. Lord Clarke identified that the question is what was the true agreement between the parties? He held that, in cases with an employment context, the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part.
 - c) Pimlico Plumbers Ltd & anor v Smith [2017] EWCA Civ 51;
 - d) Uber BV and Others v Aslam Farrar & Others 2021 ICR 657 CA – not only is the written agreement not decisive of the parties’ relationship, it is not even the starting point for determining status (although this case was on ‘worker’ status, it is still relevant to employee status);
 - e) Ter-berg v Simply Smile Manor House Ltd and ors 2023 EAT 2 (EAT considered that the Supreme Court’s decision in Uber did not displace or materially modify the Autoclenz approach. Where the true intent of the parties is in dispute, it is necessary to consider all the circumstances of the case which may cast light on whether the written terms truly reflect the agreement).
27. As confirmed in paragraphs 18 and 19 of Lord Clarke's judgment in Autoclenz in the Supreme Court: “...the classic description of a contract of employment is found in the judgement of McKenna J in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497, 515C : “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 ... Freedom to do a job either by one’s own hands or by another’s is

inconsistent with a contract of service, though a limited or occasional power of delegation may not be".

28. Further key elements are as follows:
 - a. There must be an irreducible minimum of obligation on each side to create a contract of service;
 - b. If a genuine right of substitution exists, this negates an obligation to perform work personally and is inconsistent with employee status;
 - c. If a contractual right, for example a right to substitute exists, it does not matter that it is not used. It does not follow from the fact that a term is not enforced that such a term is not part of the agreement.
29. The Supreme Court has upheld the Court of Appeal in the Autoclenz decision, and the approach to be adopted where there is a dispute (as in this case) as to an individual's status. The four questions to be asked are:
 - a. what are the terms of the contract between the individual and the other party?
 - b. Is the individual contractually obliged to carry out work or perform services himself (that is to say personally)?
 - c. If the individual is required to carry out work or perform services himself, is this work done for the other party in the capacity of client or customer?
 - d. If the individual is required to carry out work or perform services himself, and does not do so for the other party in the capacity of client or customer, is the claimant a "limb (b) worker" or an employee?

Tribunal's Conclusion

30. I have had to consider what contractual terms were agreed between the parties.
31. I accepted the evidence of the Claimant that he was provided with and did sign the written agreement.
32. Importantly, I was satisfied that the written agreement did set out the terms agreed between the parties and that the written agreement contained all of the terms of the contract. In particular, I was not satisfied that there were any additional contractual terms agreed, or variations to the written terms agreed verbally, with the recruiters or any other relevant personnel.
33. The written agreement contained a clear substitution clause which was inconsistent with an obligation to perform services personally. A Tribunal may decide that the substitution clause does not reflect the reality of the working relationship but I am satisfied that, in this case, it did. There was a genuine and

unfettered right to substitute another person to do the work and this is, evidentially, inconsistent with an obligation personally to do the work.

34. In his oral evidence, the Claimant accepted that the written contract was not a contract of employment and that he could have arranged for another person to cover his work at anytime and during his holiday. His evidence on these points was unequivocal – he confirmed that the provisions concerning the arrangement of a substitute to carry out his role were clear and that he understood there would be financial penalties if he did not arrange this. He further stated that ‘it made sense’ that the agreement was not a contract of employment. The Claimant’s answers on these matters were entirely consistent with contemporaneous evidence, as set out above, which identified that the Claimant was concerned about the penalties which might apply whilst he was away on holiday.
35. The Tribunal has jurisdiction to consider complaints of unlawful deductions from wages, brought by employees or workers.
36. Taking account of the totality of the evidence before me, I was satisfied that the Claimant had the right to perform the contract personally or to arrange for a substitute to perform it. This was expressly included in the written terms agreed and form part of the agreement between the parties. This right was inconsistent with the obligation for personal performance by the Claimant.
37. The Claimant was neither an employee nor a worker and therefore his claims are dismissed as the Tribunal does not have jurisdiction to hear them.

Employment Judge Harrington

30 July 2025