



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr M Hale

and

Respondent: Adam Feeney

HELD AT Midlands West (by CVP)

ON 18 August 2025

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: No appearance

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The claimant was not an employee or worker of the respondent at the relevant time. As such, the Tribunal does not have jurisdiction to hear the claimant's claim for unlawful deduction of wages or failure to provide an itemised pay statement.

REASONS

Background

1. By a claim form dated 5 February 2024 the claimant submitted a claim, following a period of early conciliation from 22 December 2023 to 2 February 2024 for unlawful deduction of wages and failure to provide itemised pay slips. No Response has been filed.
2. By a letter dated 26 June 2024 the Tribunal wrote to the claimant requesting him to provide any documentation showing his engagement by the respondent and for confirmation as to whether he considered himself to be self-employed. The claimant was requested to respond by 3 July 2024. By an email dated 27 June 2024 the claimant indicated to the Tribunal that he did not have any

actual documents but he did have some WhatsApp messages that he was being paid by the respondent. Screenshots of these messages were attached to the claimant's email. These screenshots consisted of screenshots of sums on calculators with the messages from the respondent indicating "Before tax", "In bank" and "Sent".

3. By an email of 8 August 2024 the claimant email of 27 June 2024 was acknowledged but it was noted that the claimant had failed to confirm whether he considered himself to be self-employed. He was asked to confirm his position by 19 August 2024. On 12 August 2024 the claimant responded as follows: *"I am self employed"*.
4. By a letter dated 18 November 2024 the Tribunal wrote to the claimant to indicate as follows:

"Employment tribunal's do not deal with claims from people who are running their own business. We only deal with claims made by employees against their employer or by people who are "workers" – i.e. working under a contract to perform the work personally for someone who is not a client or customer of the claimant's business.

Additionally, a tribunal could only order the other party to produce payslips if they exist and are relevant to the claim – it cannot order them to be created. If it is the Claimant's case that he is a worker then there will need to be a one day hearing, at which evidence will be heard from the Claimant, and a judge will decide whether the Claimant was a worker or was in business on his own account.

Does the claimant wish to proceed with this claim?

*Please reply by **25th November 2024.**"*

5. The claimant responded on 25 November 2024 to say *"Yes please continue the tribunal"*. As such, following a private preliminary hearing on 7 July 2025 the matter was listed for a public preliminary hearing to decide:

5.1 Was the Claimant an employee or worker of the Respondent i.e.:

2.2.1 Did the Claimant work under a contract to provide work personally?

2.2.2 Was the Respondent something other than a client or customer of the Claimant?

Documents and evidence

6. I was not provided with a bundle but did have the benefit of some WhatsApp messages which the claimant had sent to the Tribunal on 27 June 2024. The claimant did not produce a witness statement but answered questions put to him under oath. He was also given the opportunity to set out his position.

Findings of fact

7. I make the following findings of fact:

- 7.1 The claimant did not have a written contract with the claimant but he undertook work for the respondent from early September 2023 to December 2023.
- 7.2 The claimant was engaged to undertake dabbing work (sticking boards to walls) for a 32 storey building which the respondent had been contracted to work on for CDL. The claimant was paid on a piece work basis receiving £4 per square metre.
- 7.3 He had no set hours but he tended to work from 6.30am to 2.30pm Monday to Thursday and 1pm on a Friday.
- 7.4 The claimant could come and go as he wanted and worked on a self-employed basis and considered himself to be self-employed. He noted that the respondent could get rid of him whenever he wanted and that he had less employment rights as a self-employed individual.
- 7.5 The claimant was free to take time off when he wanted to but did not take any holidays during the period of his own engagement.
- 7.6 The claimant did not receive any sick pay nor holiday pay.
- 7.7 The claimant was free to send someone on his behalf to undertake the dabbing work although he did not do so during the engagement.
- 7.8 He was not subject to any grievance and disciplinary procedures and the respondent did not exert any control over him.
- 7.9 The claimant used his own tools, although the respondent provided a big bucket for him to use.
- 7.10 The relationship with the respondent worked well until the middle of December when the respondent failed to pay the claimant and it subsequently transpired that the respondent had failed to pay tax to HMRC in accordance with the Construction Industry Scheme (CIS) whereby contractors deduct tax from payments due to sub-contractors and are then paid to HMRC.

The Law

8. Section 8 of the Employment Rights Act 1996 ("ERA") provides:

(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of—

- (a) the gross amount of the wages or salary,*
- (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*
- (c) the net amount of wages or salary payable, ...*
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and*
- (e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—*
 - (i) a single aggregate figure, or*
 - (ii) separate figures for different types of work or different rates of pay.*

9. Section 13 of ERA provides:

- (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.*

10. Section 230 of ERA provides:

- (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.*

11. An independent contractor provides services on a self-employed basis under a contract for services.
12. The key factors in determining whether an employment relationship exists are personal service, control and mutuality of obligation.

Conclusions

13. In making my decision I have considered the evidence and documents to which I have been referred and have considered the relevant statutory provisions.
14. Having considered the information before me and the evidence of the claimant I am satisfied that the claimant was an independent contractor and not an employee or worker of the respondent. There was no requirement on the claimant to provide personal service, there was no mutuality of obligation nor was any control exercised over the claimant. As the claimant said in his evidence he was free to come and go as he wanted and take time off when he wanted to. Indeed, the claimant saw himself as a self-employed individual and recognised that he did not have employment rights and could be “got rid of” by the respondent. The parties clearly conducted their relationship on the basis of the claimant being a self-employed independent contractor and the evidence overwhelmingly supports the proposition that the claimant was a genuinely self-employed independent contractor and not an employee or worker.
15. In the circumstances the Tribunal does not have jurisdiction to hear the claimant’s complaints for unlawful deduction of wages and failure to provide an itemised pay slip. As such, the claimant’s claims are dismissed.

Approved by Employment Judge Choudry
18 August 2025

Recording and Transcription

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>