EMPLOYMENT TRIBUNALS

Claimant: Mr K Brophy

Respondent: Rivergate Developments Ltd

Heard at: Manchester, by video **On: 11 July 2025**

Before: Employment Judge Barker

REPRESENTATION:

Claimant: Ms Brophy, claimant's mother
Respondent: Mr Cousins, director of the respondent

JUDGMENT

1. The claimant was a worker of the respondent in accordance with s230(3)(b) Employment Rights Act 1996. He was not self-employed.

2. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) of the Working Time Regulations 1998.

3. The respondent shall pay the claimant **£399**. The claimant is responsible for paying any tax or National Insurance on this sum.

4. The respondent did not have authority to deduct money from the claimant's wages. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 15 December 2024 – 27 January 2025.

5. The respondent shall pay the claimant **£665**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

REASONS

Preliminary matters and issues for the Tribunal to decide

1. The claimant was engaged by the respondent from 5 December 2024 until 27 January 2025, as a "general operative/joiner". The dispute between the parties is primarily about deductions made by the respondent from the claimant's wages for what the respondent says was poor workmanship, and about the fact that he received no holiday pay for his time working for them. The Tribunal heard evidence from the claimant and from Mr Cousins, the director of the respondent.

2. The claimant's case is that he was engaged as a "worker" (s230(3)(b) Employment Rights Act 1996). The respondent's case is that he was self-employed.

3. I explained to the parties at the start of the hearing that, to decide whether the respondent owed the claimant wages and holiday pay, I would first need to hear evidence about the claimant's status.

4. If the claimant is found to be a worker, because of the rights conferred on workers by section 13 Employment Rights Act 1996 (the right not to suffer unauthorised deductions) and by the Working Time Regulations 1998 (the right to paid annual leave), the claimant will automatically become entitled to compensation from the respondent.

5. This is because the respondent accepts that the claimant was not paid holiday pay, but as it says he was not a worker or an employee, he has no entitlement to it.

6. As for the deductions for poor performance, if the claimant is found to be a worker, prior written consent to deductions is required by s13 Employment Rights Act 1996 and if there is no prior written consent from the worker, the deductions are unlawful. The respondent accepts that deductions were never authorised in writing in advance of the deductions being made but they say this was not necessary.

7. The claimant's representative, who is also his mother, had prepared a full list of the factors that a Tribunal would need to take into account in deciding whether or not an individual was a worker, an employee, or self-employed, and had provided a summary of the points in favour of why the claimant was a worker in an email to the respondent and the Tribunal dated 16 April 2025. She had also provided to the Tribunal and the respondent an 11-page document produced by the Department for Business and Trade found on the www.gov.uk website which is a guide to these issues and how they can be resolved. It was not clear whether Mr Cousins had read this. He did not appear to consider this information important and said several times that he considered the only factor that was important was that the claimant was registered with HMRC as being self-employed on the Construction Industry Scheme (CIS). I told him that while this was one factor I could take into consideration, it was by no means the only factor and it certainly did not decide the issue of a worker's status for employment (as opposed to tax) purposes. I said that that it was quite possible for an individual's tax status and their employment status to be different. I gave him a ten-minute adjournment to find the documents and to organise his papers before the hearing started in earnest.

Findings of Fact

8. The claimant worked for the respondent as a joiner from 5 December 2024. The role was full-time on-site with the respondent, from Monday to Friday 7.30am to 4pm. The claimant

was given an offer letter on 11 December 2024. The terms of the role and the offer letter were drafted by the respondent and the claimant had no input in negotiating the terms on which he worked. He was told that the offer was a sub-contract role under the terms of the HMRC Construction Industry Scheme ("CIS"). The claimant was paid by the respondent weekly into his bank account.

9. The offer letter says that the claimant was going to be provided with a "starter pack" from the respondent with the respondent's policies that he was expected to follow. The respondent's evidence was that this was given to the claimant, but he did not read it. For the purposes of the claimant's employment status, it does not matter whether he read it or not but whether the respondent intended that he read it and intended that he was obliged to comply with it.

10. It was the claimant's evidence that other than being paid via the CIS and registered for tax as a sub-contractor, he was otherwise treated as an employee of the respondent. I accept that the respondent supervised the claimant's work on site and set his working hours. The claimant used materials supplied by the respondent. He was paid for the hours he worked and not by each task he completed.

11. The parties disagreed over the claimant's entitlement to take Christmas Eve afternoon off work. The claimant's evidence was that his colleagues had taken the afternoon off and he believed he was allowed to do the same. Mr Cousins suggested by his repeated reference to this that he was displeased that the claimant had taken that afternoon off, which suggests a high level of intended control over the claimant by the respondent. Mr Cousins' objections did not appear to be on the basis that the claimant had left a job unfinished, but that he had not asked for the respondent's permission to take the afternoon off. The claimant's evidence was that he was told he had to give two weeks' notice of holiday requests.

12. There was a dispute over whether the claimant was required by the respondent to have his own insurance. The claimant's case is that he was never asked to do this or to confirm that he had his own insurance. Mr Cousins was asked whether the claimant was ever chased by the respondent to confirm that he had his own insurance. Mr Cousins said "the pack was left by him on the floor in one of the properties he was working in" suggesting that the claimant was asked to fill information in and return it to the respondent, with Mr Cousins being unhappy that he didn't. Mr Cousins then said "it wasn't necessary though as the claimant confirmed he had insurance." This is somewhat contradictory. The claimant says he was never asked about insurance. I note there is no mention of a need for insurance in the contract offered to him. I do not accept that the claimant was ever asked to provide his own insurance to work for the respondent.

13. Mr Cousins initially said when asked that he thought that the claimant was required to send invoices in, to be paid, then said that he couldn't recall if the claimant was told that he needed to send invoices. This contradicts the evidence that the claimant was paid a standard daily rate of £95 per day into his bank account at the end of each week worked.

14. Mr Cousins was asked if the daily rate included holiday pay or sick pay. He said that the claimant was paid at a higher daily rate to compensate for the fact that he was not entitled to holiday pay or sick pay. When asked what a directly employed employee's daily rate (comparable in experience to the claimant) would be paid, he initially refused to provide a figure, then said that the daily rate would be approximately £70-£75 per day. The claimant's

representative pointed out that this was likely to be below the National Minimum Wage, even for 18-20 year-olds.

15. The working relationship between the claimant and the respondent broke down and the claimant stopped working for the respondent from 27 January 2025.

16. The claimant worked for the week from Monday 20 January to Friday 24 January 2025 and Monday 27 January 2025. No payment was ever received by him for this work. The claimant says that £475 and £95 (minus CIS deductions) was due to him. He also worked for two half days on 15 December and 31 December 2024 for which he was not paid, which is another £95.

17. The respondent's business closed over the festive period 2024-2025 and the claimant was obliged to take holiday. His statutory holiday entitlement for the period he worked for the respondent was not paid to him when he left on 27 January 2025.

18. It is the respondent's case that he is not entitled to holiday pay.

19. It is the respondent's case that the wages payments were withheld by them because of his poor workmanship that they would need to rectify. They argue that they do not need any authorisation to withhold money in this way and say that this is in the "HMRC guidance for subcontractors." I was not shown a copy of this guidance by the respondent.

20. The claimant agrees that there was never any written agreement between him and the respondent to allow them to make deductions from his wages, for substandard work or otherwise.

The Law

21. A worker is defined by S.230(3) Employment Rights Act 1996 as an individual who has entered into or works under:

    •a contract of employment (defined as a 'contract of service or apprenticeship') — S.230(3)(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 — S.230(3)(b).

22. To come within the scope of s230(3)(b) as a worker, a claimant must show:

    •the existence of a contract
    •that he or she undertakes to personally perform work or services for another party, and has only a limited right to subcontract
    •that the other party is not a client or customer of a profession or business undertaking carried on by the individual. It does not cover those who are genuinely carrying out a business activity on their own account.

23. Workers enjoy the benefit of the wages protection rules in the Employment Rights Act 1996. In particular, s13 states that an employer may not make deductions from wages of a worker employed by him unless the deduction is authorised by law, authorised by

a clause in the contract, or unless the worker has given prior written agreement to the deductions being made.

24. Workers are entitled to minimum paid holiday of 28 days per year (pro-rated for part years worked) under the Working Time Regulations 1998. Any unpaid leave remaining when a worker leaves employment must be paid to him on termination.

25. Relevant issues to determining worker status were said by the Supreme Court in *Uber BV and others v Aslam and others [2021] UKSC 5* to include:

- Questions of the levels of pay and who fixed these levels;
- Who drafted and imposed the contractual terms;
- Whether the individuals were obliged to provide services and was the company obliged to offer work;
- Could suitably qualified substitutes be provided to carry out the work on their behalf?

26. This was part of a set of facts that the Supreme Court in *Uber* found showed "*a system tightly controlled by Uber for its own benefit with little input from the drivers*", who Uber had tried to argue were self-employed. The Supreme Court found that they were in fact workers.

27. The issue of personal service and whether an individual is able to send a substitute has been found to be a key issue in determining worker (as opposed to self-employed) status. In *Cotswold Developments Construction Ltd v Williams [2006] IRLR 181, EAT* where there was insufficient mutuality of obligation to indicate a contract of employment, the issue was then whether the claimant was obliged to do a minimum, or reasonable, amount of work personally to qualify as a "worker".

28. Harvey on Industrial Relations and Employment Law, "Categories of Worker – Independent Contractors" (para 95,96) notes that "*an independent contractor is one who enters a contract for services as opposed to a contract of employment. The employer buys not so much the right to the worker's service, as the right to the end product of his or her labour. He pays them not so much to do the job as to get the job done…..The contractor is independent in the sense that he or she is responsible for making their own decisions in performing the job, by way of contrast with the employee who is subject to the directions of the employer*."

29. The Construction Industry Scheme ("CIS") is designed to prevent evasion of income tax and national insurance contributions in the construction industry. The CIS applies to all payments made under a contract relating to construction operations which is not a contract of employment, where one party is a sub-contractor, and another party is a contractor.

30. Construction Industry Scheme status is not an indication of employment status, save that the CIS does not apply to anyone who is directly employed by the contractor. CIS is an initiative for HMRC to collect tax whereas employment status determines an individual's rights. HMRC guidance makes clear that:

Employment status depends on general law and it's for the contractor to decide on the individual's employment status when the subcontractor is first engaged. The fact that

> *the subcontractor has worked in a self-employed capacity before is irrelevant in deciding on their employment status — it's the terms of the particular engagement that matter.*

Application of the law to the facts found

31. On the facts of the case, I find that the claimant was a "worker" of the respondent. He was not a self-employed contractor. He was paid for his service, not the end product of his labour. The issue of whether he could ever send a substitute was not discussed by the parties and there was no expectation, for the period that he worked for the respondent, that this would ever be done by him. I find that this is because expectation of the parties was that the claimant would always attend in person.

32. The respondent argued several times that, because the claimant was CIS registered, that he must be self-employed. The CIS is not an indication of employment status, but of tax status. It is accepted that the claimant is not directly employed by the respondent and so is not an "employee". However, CIS registration allows an individual to be either self-employed, or a "worker". The claimant was a worker. The terms of his employment suggest, as was the circumstances of the *Uber* drivers, a workplace tightly controlled by the respondent for its own benefit with little input from the claimant as to the terms on which he worked, the rate of pay that he was entitled to or the hours of work he did. I accept that, save for his tax status, he was treated no differently from those who were directly employed by the respondent. The claimant was a junior member of staff, and Mr Cousins wanted to be able to subject him to a relatively high level of control. That is not compatible with him being self-employed.

33. Had the respondent wanted to deduct wages for supposed poor performance by the claimant they would have had to have prior agreement from him to do so. This is because of the Employment Rights Act 1996 rules on the protection of wages, that apply to workers and employees, in particular section 13. There was nothing in the contract and nothing in writing agreed by him. Therefore, the respondent had no right to make those deductions and they must repay the money to him that they have taken. The matters the respondent raised as justification, such as the quality of his work or the level of his skills and experience, are entirely irrelevant to this. The claimant says he is owed £665 for the equivalent of 7 days work. This is what the respondent must repay.

34. The claimant is entitled to holiday pay pro-rated for the period of the year he worked for the respondent. He worked for 7 weeks and 5 days. If he had worked for 52 weeks he would have been entitled to 5.6 weeks holiday. Pro-rata for the amount of time he has worked, he is entitled to 4.2 days holiday at £95 per day, which is £399.

35. The respondent must pay the sum of £1064. The claimant is responsible for accounting to HMRC for tax and national insurance.

Approved by
Employment Judge Barker
25 July 2025

Judgment sent to the parties on:
4 September 2025

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For the Tribunal:

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

ARTICLE 12

Case number: **2400825/2025**

Name of case:	**Mr K Brophy**	v	**Rivergate Developments Ltd**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 4 September 2025

the calculation day in this case is: 5 September 2025

the stipulated rate of interest is: **8% per annum**.

Paul Guilfoyle

For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note: www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.