



EMPLOYMENT TRIBUNALS

Claimant: Mr C Jones

Respondent: Despatch Cloud Ltd

Heard at: Leeds Employment Tribunal (by video) **On:** 12 May 2025

Before: Employment Judge Armstrong

REPRESENTATION:

Claimant: In person

Respondent: Miss Mallick (counsel)

JUDGMENT having been sent to the parties on 21 May 2025 and a request having been made in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal provides the following

REASONS

Claims

1. The claimant brings claims for payments he says are due to him from the respondent pursuant to a contract dated 1 November 2023 (see further below). He says that these are due either as damages for breach of contract, or in the alternative as unauthorised deductions from wages.
2. A claim for unfair dismissal was struck out on 4 February 2025 on the basis that the claimant did not have sufficient length of service to bring such a claim.
3. The claimant can only bring a claim for unauthorised deductions from wages if he was a worker or employee of the respondent. He can only bring a claim for breach of contract if he was an employee of the respondent (see further below). Therefore on 4 February 2025 EJ Deeley directed that the claim be listed for a public preliminary hearing on 12 May 2025 to consider:
 - (a) the issue of the claimant's employment status (i.e. whether or not the claimant was an employee or a worker of the respondent as defined by s230 of the Employment Rights Act 1996, for the purposes of his claims for unauthorised deductions from wages); and
 - (b) if the claimant is found to be an employee or a worker, any case management orders that may be appropriate.

Conduct of hearing

4. The hearing took place on 12 May 2025 by video. The claimant attended and represented himself. The respondent was represented by counsel, Miss Mallick. Both parties confirmed that they were able to see and hear throughout the hearing and were able to engage with the proceedings fully.

Background

5. The claim arises out of an agreement titled '*consulting agreement*' between the respondent and Yortech Ltd dated 1 November 2023 (**45-50**). The claimant is a director of Yortech Ltd, which is a limited company.
6. At the outset of the hearing, the claimant confirmed that he does not claim to have been an employee of the respondent. The only issue for me to determine was therefore whether he was a worker of the respondent and therefore entitled to bring a claim for unauthorised deductions from wages against them.
7. In his oral evidence, Mr Jones set out that he considers himself to have been a worker of the respondent because on the anniversary of the consultancy agreement, he would have become an employee. He was dismissed for gross misconduct before that anniversary, which would have been 31 October 2024. In addition, he says that the role he worked in was as chief commercial officer for the respondent. He says that all his correspondence, including his email address and footer, were in the respondent's name. He had an @despatch cloud email address.

Evidence

8. The respondent produced a bundle comprising **67** pages. The claimant did not submit any documentary evidence.
9. I have seen some correspondence between the parties regarding requests made by the respondent to the claimant for documents. The respondent did not seek to rely on these at the hearing on the basis that the claimant accepted that he had not filed any documentary evidence and confirmed at the outset that he had not provided any evidence.
10. At the hearing (at the outset and again in the course of his oral evidence) the claimant sought permission to admit a further document, specifically an email from Mr Drury in which he asserted that Mr Drury placed him on gardening leave. I refused the application on the basis that the claimant had had a number of opportunities to provide documentation on which he sought to reply and had failed to do so. In fact in his oral evidence Mr Drury accepted using this term and I return to this below.
11. The claimant had not provided a witness statement, although he was directed to do so in the order of 4 February 2025. However, the respondent's representative was content to proceed on the basis that Mr Jones gave

evidence in line with his claim form, and with some brief supplementary oral evidence explaining his position. He was cross-examined by Miss Mallick.

12. The respondent's chief financial officer, Mr Solomon Drury, gave oral evidence. He had provided a witness statement dated 23 April 2025 (40-43). The respondent sought to adduce a supplementary witness statement from him dated 9 May 2025. I was satisfied that it was in the interests of justice to admit this statement as the claimant had had some time to read it in advance, it contained information he was likely to have given in oral evidence in any event, and it was of assistance to the Tribunal to have that information in writing. He was cross-examined by the claimant.

Findings of Fact

13. I took all the evidence before me into account even if I do not specifically refer to it here. In particular I took into account the following aspects of the evidence, which were addressed by both parties:
14. I have considered the terms of the contract dated 1 November 2023 between the respondent and Yortech Ltd (45-50). The claimant signed the contract on behalf of Yortech Ltd (50). He accepted in oral evidence that the contract was with Yortech Ltd and not himself. The agreement is to provide consultancy services to the respondent. Within the contract the respondent is defined as 'the client' and Yortech Ltd is defined as 'the consultant'.
15. A number of the terms of that agreement are relevant to the issue that I have to determine. In particular:
16. Clause 1 provides that Yortech Ltd will provide to the respondent consulting services in the form of a Chief Commercial Officer (CCO), who *'will have complete autonomy all sales and marketing activity'* (45).
17. Clauses 6-10 deal with payment which is agreed as a flat fee of £65,000 to be paid by monthly equal amounts of £5466.16 which will be invoiced by Yortech Ltd. Clause 9 provides that *'The Consultant [Yortech Ltd] will be responsible for all income tax liabilities and National Insurance or similar contributions relating to the Payment and the Consultant will indemnify the Client [the respondent] in respect of any such payments required to be made by the Client'*. Clause 10 provides that Yortech Ltd will be solely responsible for the payment of all remuneration and tax *'due to the employees of the consultant'*. Interest is payable on late payments (clause 13) (46).
18. Clause 20 provides: *'In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.'* (47).
19. Clauses 21 and 22 provide an absolute right of substitution to Yortech Ltd and provides that Yortech Ltd will be liable for the payment of any sub-contractor

engaged to carry out any elements of the obligations under the agreement (47).

20. Clause 23 is headed 'AUTONOMY' and provides that *'Except as otherwise provided in this agreement the Consultant will have full control over working time, methods, and decision making in relation to the provision of the Services in accordance with the Agreement. The Consultant will work autonomously and not at the direction of the Client. However, the consultant will be responsive to the reasonable needs and concerns of the Client.'* (48)
21. Paragraph 24 provides that Yortech Ltd will provide their own equipment. Paragraph 25 states that the Agreement is non-exclusive and either party is free to contract with other parties for the provision of similar services (48).
22. Invoices were sent monthly pursuant to the agreement. I have seen a number of these (52-59). The invoices for November and December 2023 were sent in name of Yortech Ltd and are headed 'Tax Invoice' (52-53). The invoices from January 2025 are in the claimant's name. In his oral evidence Mr Jones accepted that this was an error and pointed out that the invoices have the name and address of Yortech Ltd name on the bottom. Payment for the contracts was made into a personal bank account in the claimant's name (see e.g. 59).
23. The invoices are clearly for the gross amount as set out in the agreement. The claimant was asked about how the tax on the invoices was paid, and specifically whether he paid corporation tax on it at a flat rate. He said he was unable to answer the question as his accountant dealt with all his tax matters. He said he had not provided his tax returns as he had not been asked for them until the Friday before this hearing, and his accountant had all that information. The claimant was unclear in his evidence as to how he drew money from the company Yortech Ltd, and whether he was an employee or whether he drew dividends. He said that he had not taken any money out of the company. He appeared to suggest that his personal bank account was the company's bank account.
24. Mr Drury accepted in his oral evidence that the claimant was provided with a 'Despatch Cloud' email address and headers. In his second witness statement Mr Drury described how Mr Jones carried out the role of Chief Commercial Officer. He describes that the claimant had autonomy in his role and *'was the 'outside' expert in sales and marketing.'* Mr Drury says that Mr Jones *'ran the sales team as he saw fit...kept his own hours of work, broadly in line with an 'office day', but he worked in accordance with the needs of the business, the Respondent was not monitoring his time keeping or attendance or his day-to-day tasks or working methods'* (para 8). Mr Drury states that there was *'no supervision'* of the claimant, that monthly sales metrics reports were discussed with him but he was not given objectives and targets, unlike members of the sales team (para 10, 12). He did not have a business card, holiday arrangements, sickness absence or sick pay rights (para 14). The respondent engages other outside sales staff as independent contractors, on similar terms to the claimant (para 15).

25. In cross-examination, Mr Jones disputed some concerns that Mr Drury had raised about the way in which some contracts he was responsible for were signed, but did not challenge the majority of this evidence.
26. In cross-examination of Mr Solomon, Mr Jones put to him that towards the end of his time working with Despatch Cloud there were some meetings between the claimant, Mr Drury, and other senior employees of the respondent regarding an agreement that on the twelve month anniversary of the consultancy agreement the claimant would become an employee of the respondent, with a 1% share agreement, rising to 2.5% over time. This share agreement would be in place of commission payments. Mr Drury accepted that there were some discussions, and that he was present at some but not all of those. He accepted that the possibility of Mr Jones becoming an employee was discussed, as was the possibility of an agreement that he would receive shares rather than being paid commission. However this was *'never put into a contract'* and *'never finalised'*.
27. I have seen an email dated 23 June 2024 from Mr Jones to Mr Drury (62). The subject line is *'Re: Notice of Termination of Consultancy Agreement'*. Mr Jones states *'I am writing on behalf of Yortech Ltd to formally notify Despatch Cloud Ltd of a breach of the consultancy agreement between our companies, entered into on November 1, 2023.'* He then sets out that a draft share agreement sent to him following the discussions above did not reflect the terms agreed. He goes on to complain that he was not given sufficient autonomy over his role, as he should have been under the consultancy agreement. He then states *'Additionally, it is important to note that company policy does not apply to Mr Jones as he is a consultant, not an employee.'* He concludes that he will be seeking damages and hopes to resolve the matter amicably.
28. In oral evidence Mr Jones stated that his intention in this email was to terminate the agreement between the two companies, but not until 31 October 2024 (the end of the agreement). He said that at that point he was put on gardening leave by Mr Drury.
29. In oral evidence Mr Drury accepted that shortly after Mr Jones's notice of termination, he emailed Mr Jones *'stating a number of different things and I put in inverted commas the words 'gardening leave'*. He accepted that he also stated that company policy was to remove access to emails with clients when employees' employment is terminated. He explained that he used the phrase 'gardening leave' *'because I was trying to get across the meaning that we would pay him but he was not required to work and not required in the office.'* Mr Drury stated that following this Mr Jones requested *'an amount for the full period of the contract which we disputed'* and after that the respondent paid Mr Jones until the contract was terminated on 12 August 2024.
30. On 21 August 2024 Mr Jones emailed Mr Drury, stating *'I am writing to provide a summary of the outstanding payments under the consultancy agreement'*. He then sets out the outstanding payments he says are due, in the sum of £8,870 (67).

31. In his oral evidence Mr Drury also appeared to accept that there were some allegations of gross misconduct. He confirmed that following termination of the agreement no appeal hearing was held because the respondent did not consider that Mr Jones was an employee.
32. The reasons for the termination of the agreement are not an issue for me to determine today and I make no findings as to how it came to an end. However it appears that at some point Mr Jones was notified that Yortech Ltd were no longer required to provide any services under the contract. There were some allegations of gross misconduct made, and the agreement was terminated. Mr Drury states that the respondent terminated the contract and it came to an end on or around 12 August 2024 (43).
33. The claimant commenced early conciliation via ACAS on 25 June 2024 and an early conciliation certificate was issued the same day. The claim was presented to the Employment Tribunal on 15 August 2024.

Relevant Law

34. The Employment Tribunal has jurisdiction to hear a claim for breach of contract brought by an employee (and only an employee) providing that it is extant on termination of the employment contract (s.3 Employment Tribunals Act 1996 and The Employment Tribunals Extension of Jurisdiction (England and Wales) order 1994). The claimant does not claim to have been an employee of the respondent and therefore this issue does not arise.
35. The Employment Tribunal has jurisdiction to hear a claim for unauthorised deductions from wages brought by an employee or worker. Section 13 Employment Rights Act 1996 (ERA 1996) provides (in so far as relevant):
- ‘(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.*
- [...]*
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.’*
36. Section 23 ERA 1996 establishes that a worker may bring a complaint of a breach of section 13 to the Employment Tribunal. Section 27 ERA 1996 provides that ‘wages’ includes any fee, bonus, commission, holiday pay or ‘other emolument referable to his employment’.

37. The terms 'employee' and 'worker' are defined at s.230 ERA 1996 (in so far as relevant):

'(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.'

38. The respondent's counsel in her skeleton argument refers to a number of authorities relevant to determining the issue of worker status. I have considered all the cases referred to therein, as well as the considerable body of jurisprudence on this point.

39. A Tribunal judgment is not intended to be a full recitation of the law. However, in brief summary the relevant principles I have applied in coming to my conclusion are:

40. The starting point is always the words of the statute (see e.g. *Sejpal v Rodericks Dental Ltd* 2022 ICR 1339, EAT).

41. A 'worker' contract has three elements (as defined in the statute): (i) a contractual relationship whereby an individual undertakes to perform work or services for the other party (see e.g. *Catt v English Table Tennis Association Ltd and ors* 2022 IRLR 1022, EAT); (ii) an undertaking to do the work / perform the services personally (see e.g. *Pimlico Plumbers Ltd and anor v Smith* 2018 ICR 1511, SC); and (iii) a requirement that the other party to the

contract is not a client or customer of the individual's profession or business undertaking (see e.g. *Bates van Winkelhof v Clyde and Co LLP and anor (Public Concern at Work intervening 2014 ICR 730, SC)*).

42. Determining 'worker' status is an exercise in statutory interpretation, rather than an analysis of what was agreed in the written contract. It is necessary to determine the true agreement between the parties and view the facts realistically. Where the written documentation may not reflect the reality of the relationship, it is necessary to make that determination by examining all the circumstances, of which the written agreement is a part (see e.g. *Uber BV and ors v Aslam and ors 2021 ICR 657, SC*).
43. I must bear in mind the purpose of the legislation, which is to provide protection for vulnerable individuals who are in a subordinate and dependent position in relation to a party who exercise control over their work (see *Uber BV and ors v Aslam and ors, ibid.*).

Conclusion

44. Taking into account all the evidence, and the principles set out above. I am satisfied that the claimant was not an employee or worker of the respondent, for the following reasons:
45. The terms of the written contract are clear. The first difficulty the claimant faces is that he was not a party to that contract. He himself clearly asserted this in his email of 23 June 2024 where he refers to the '*agreement between our companies*'. Even were I to be satisfied that I should go beyond that and find that he was a party to the contract with the respondent, that agreement clearly provides for a right of substitution, full autonomy in his work, and payment by invoices gross, rather than in the form of wages.
46. I take into account the purpose of the statute and the relative bargaining power of the parties. There is no evidence to suggest that the claimant was in a subordinate position and lacked bargaining power. On the contrary, he signed the contract on behalf of a limited company of which he was the director.
47. I have considered whether there are any other surrounding circumstances which suggest that the written agreement does not reflect the true agreement between the parties, as follows.
48. The consultancy agreement is on all fours with the tax position. The claimant's evidence regarding his tax liability was unclear. He still has not confirmed whether Yortech Ltd paid corporation tax on the money received, or whether he paid himself a salary which was subject to income tax. Either way it is uncontested that the invoices were paid gross and it was for Yortech Ltd to arrange the appropriate tax payments. This is consistent with the contractual provisions.
49. I note that the money for the invoices was paid into a personal bank account. I am satisfied that this simply reflects a practical arrangement of how the

money was transferred to Yortech Ltd. In the context of the agreement being with the limited company and the invoices being presented on behalf of the limited company, the way in which the money was transferred to reach that corporate body does not make it a contract with the claimant himself. The claimant does not allege this in any event and in fact in his evidence appeared to suggest that his personal bank account was used as the Yortech Ltd bank account.

50. The fact that the claimant was provided with a 'Despatch Cloud' email address is not sufficient, in the context of all the other evidence, to establish that there was a contract for personal service between these parties. It was submitted on behalf of the respondent, and I accept, that it would have been odd for the Mr Jones to provide the services he did (through Yortech Ltd) without an appropriate email address to indicate that he was acting on behalf of Despatch Cloud Ltd.
51. I have considered Mr Drury's evidence regarding why he referred to 'gardening leave' and a policy which applied to 'employees' in email correspondence with the claimant. I accept the reasons he gave for using the term 'gardening leave' – that it was to express that the respondent intended to continue paying the invoices presented but that there would be no requirement for Yortech to continue to provide services. The fact that he referred to the removal of emails under a policy which applied to employees does not outweigh the other evidence – particularly in the context of the claimant himself strongly asserting in email at or around the same time that he was *not* an employee.
52. The contractual provision is also consistent with the reality of the work done. I am satisfied on the basis of Mr Drury's evidence, even taking into account the points made by Mr Jones in cross-examination, that he had significant autonomy. I am also satisfied and find that there was a complete right of substitution. The contract was with Yortech Ltd and they could have engaged someone else to provide some or all of the services under the contract.
53. I have considered the alleged agreement that Mr Jones would become employed when the consultancy agreement came to an end. The respondent says there was no concluded agreement. I do not need to make findings as to any terms and whether or not there was a concluded agreement. At its highest, the claimant's case is that any such agreement would only have come into effect after the contractual relationship under which he brings this claim was terminated. Therefore any such agreement (if it was concluded) does not entitle him to bring a claim to the Employment Tribunal for breach of contract because he was not an employee at the time the contract terminated. He accept this. For the same reason, he could not have been a worker pursuant to any such contract at the relevant time.
54. I am satisfied and find that this was a genuine consultancy agreement between two limited companies. The claimant was not a party to the contract. There is no requirement for personal service. The respondent had no control over the way the claimant worked. The written contract reflected the full reality of the relationship. I have considered the purpose of the legislation and

I am satisfied that Mr Jones was not a vulnerable worker, and that this agreement was not an attempt to subvert or circumvent his potential rights under the legislation.

55. The claim is therefore dismissed as the Tribunal has no jurisdiction to hear it.

Employment Judge Armstrong

Date: 12 June 2025