Case Number: 1401318/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr D Phillips**

Respondent: **Stubborn Rhino Ltd**

Heard at: **Southampton ET** **On:** **21 & 22 August 2025**

Before: **Employment Judge Scott**

Representation
Claimant: In person
Respondent: Mr Robertson

JUDGMENT

1. The claimant is a worker within the meaning of section 230 of the Employment Rights Act 1996 engaged under a discrete contract for each event worked.
2. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages on 9 February 2024.
3. The respondent shall pay the claimant £30.25, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.
4. The complaint of unauthorised deductions from wages between May 2023 and 7 February 2024 was not presented within the applicable time limit. It was reasonably practicable to do so. Those claims are therefore dismissed.
5. The complaint of detriment under s23 National Minimum Wage Act 1998 is not well-founded and does not succeed.

REASONS

1. By a claim form presented on 27 May 2024, the claimant , Mr Phillips, complained of a detriment for failure to pay national minimum wage, unauthorised deductions of wages.

2. By a response form dated 14 October 2024, the respondent, Stubborn Rhino Ltd resisted the claim. The respondent's case is that the claimant was not a worker, but an independent sub-contractor.

3. The claimant worked for the respondent as a barista on an ad hoc basis. On 27 February 2024, Mr Robertson informed the claimant that the company would not be requiring his services any further.

4. The claimant lodged a claim for early conciliation with ACAS on 7 May 2024 and a certificate was issued on 13 May 2024. As this Tribunal claim was lodged on 27 May 2024, any act that took place before 8 February 2024 is out of time.

Issues

5. The issues to be determined by the Tribunal were agreed at the outset of the hearing as follows:

Employment Status

1.1 Was the Claimant a worker of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

Time Limits

2.1 Was the unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996?

Detriment (National Minimum Wage Act 1998 section 23)

3.1 Did the Claimant take action or propose to take action with a view to enforcing or otherwise securing the benefit of, the right to be paid the national minimum wage? The Claimant says he did so in the email exchange between him and Mr Robertson between 31 January and 27 February 2024.

3.2 Was the claim to the right and/or the claim that it has been infringed (if applicable) made in good faith.

3.3 Did the Respondent tell the Claimant on 27 February 2024 that it would no longer be requiring his services?

3.4 By doing so, did it subject the Claimant to a detriment?

3.5 Was it done on the ground that:

2.3.1 The Claimant took action or proposed to take action as above;
2.3.2 The Claimant qualified or might qualify for the national minimum wage.

Unauthorised deductions

4.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted?

Remedy

5.1 What financial losses has the detrimental treatment caused the Claimant?
5.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
5.3 If not, for what period of loss should the Claimant be compensated?

Evidence

6. I heard evidence from Mr Phillips in person, and from his witness Rose Thompson. For the respondent, I heard evidence from Mr Robertson.

7. Neither Mr Phillips nor Mr Robertson prepared witness statements for use in the hearing, having misunderstood the requirements for a witness statement as set out in the case management order.

8. The parties agreed that Mr Phillips and Mr Robertson would use their statements of case to stand as their evidence in chief. Given both parties had failed to comply with directions, there was no clear prejudice to either party in proceeding in this way, and I concluded that it was in line with the overriding objective to allow the parties to use their statement of case as their evidence in chief.

9. The parties also provided an agreed bundle of 105 pages. Following discussion of the evidence, Mr Phillips provided copies of his bank statements as late evidence. Mr Robertson did not oppose the admission of this late evidence, which had previously been provided in disclosure, but not included in the final bundle due to concerns around the bundle size. The late evidence was admitted in line with the overriding objective because it was relevant to the issues in the case, had previously been disclosed, and could have been included in the bundle had the parties understood the case directions. It was therefore in the interests of justice to admit it.

Relevant Legal Framework

10. A worker is defined by S.230(3) Employment Rights Act 1996 as an

individual who has entered into or works under:

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

11. In order that a person qualifies as a worker under s230(3)(b), the claimant must show:
    a. the existence of a contract
    b. that he or she undertakes to personally perform work or services for another party, and has only a limited right to subcontract
    c. 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.

12. 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.

13. The Supreme Court in *Uber BV and others v Aslam and others [2021] UKSC 5* set out the following issues to be considered in relation to worker status:

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

14. 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".

15. In relation to the nature and degree of substitution, the Court of Appeal in *Pimlico Plumbers Ltd and anor v Smith 2017 ICR 657, CA* set out that;

a. An unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally.
b. A conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality, and the extent to which the right of substitution is limited or occasional.
c. A right of substitution only when the contractor is unable to carry out the work will be consistent with personal performance
d. A right of substitution limited only by the need to show that the substitute is qualified, is inconsistent with personal performance
e. A right to substitute only with the consent or another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance.

16. In *Stuart Delivery Ltd v Augustine 2022 ICR 511, CA*, the Court of Appeal highlighted that this was not a definitive list of categories but specific examples provided to assist the Tribunal.

Detriment (National Minimum Wage Act 1998 section 23)

17. The National Minimum Wage Act 1998 (NMW 1998) sets out the protections for a worker from detriment as follows;

(1)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that—

(a)any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or

(b)the employer was prosecuted for an offence under section 31 below as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or

(c)the worker qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

18. In accordance with section 24 NMW Act 1998 a worker may enforce their right before an Employment Tribunal. The compensation received by the worker must not exceed the compensation which would be the basic award for unfair dismissal, in accordance with s119 of the Employment Rights Act 1996 (ERA 1996), and the compensatory award in accordance with s124 (1) of the ERA 1996.

Time limits

19. The ERA sets out in s23 (2)(a) that:

> *(2) an **[**employment tribunal**]** shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*
> *(a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
> *(b)in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

20. The ERA 1996 sets out as s23(4) that where it was not reasonably practicable for a complaint to be presented in three months, the tribunal may consider the complaint if it was presented within such further period as the tribunal considers reasonable.

21. The Tribunal has reminded itself of the general principles that have been set out to guide the Tribunal when considering whether it was not reasonably practicable for a claimant to present their claim within the time limit.

    a. The test in should be given a *'liberal construction in favour of the employee' Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA.*
    b. What is reasonably practicable is a question of fact for the tribunal to decide. In *Wall's Meat Co Ltd v Khan 1979 ICR 52, CA,* this was expressed as follows;
       '*The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive'*
    c. The duty is on the claimant to show that it was not reasonably practicable for them to meet the time limit. '*That imposes a duty upon him to show precisely why it was that he did not present his complaint'* (*Porter v Bandridge Ltd 1978 ICR 943, CA*).
    d. If the Tribunal is persuaded that it was not reasonably practicable for the claimant to submit the claim form in time, the tribunal must also be satisfied that the claim was presented *'within such further period as the tribunal considers reasonable'*.
    e. A claimant's ignorance may make it not reasonably practicable to present a claim in time, but the Tribunal should ask whether the

claimant ought to have known them. *Porter v Bandridge Ltd 1978 ICR 943, CA*.

f. In *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53*, CA, The Tribunal will consider the following questions.
    i. What were his opportunities for finding out that he had rights?
    ii. Did he take them?
    iii. If not, why not? Was he misled or deceived?

Findings of fact.

22. The parties agree that at all material times, the respondent company was a coffee event business with mobile coffee units and that the claimant was engaged to provide barista services at those mobile coffee units.

23. It is common ground that the claimant applied to Stubborn Rhino following an internet advertisement, and subsequently had a video interview via Zoom. Neither party had a copy of the original advert.

24. At the interview, the claimant accepts that he was asked whether he had a UTR code, and was told that the company do not pay travel time, but would pay either accommodation at an event or fuel. The Respondent says that during that interview the claimant was told that he would be an independent contractor, who would raise his own invoices. This was not disputed by the claimant and I accept that he was told he would be an independent contractor.

25. The claimant says he was asked what his pay expectations were, and, that because he is a very skilled barista who can also fix and install espresso machines, he said that he placed himself at £15 per hour. The claimant says he explained that an average of £12 would work for him, but that he needed a higher hourly rate because he would not be directly paid holiday pay.

26. The parties agree that there was no written contract setting out the terms of the claimant's engagement with Stubborn Rhino.

27. The claimant explained that he considered his work with Stubborn Rhino to be his main source of income. He felt it fitted in with his lifestyle, because the claimant also undertook acting work on smaller contracts, and periodically took on other work.

28. It is common ground that there was no obligation on the claimant to accept an offer of work from the respondent. The claimant confirmed that he was offered an event which clashed with an acting contract that the claimant wished to take and he therefore declined the work. The claimant

acknowledged that there was no impact on his role as a result of turning down the work.

29. The claimant gave evidence to the Tribunal clearly and frankly, including without hesitation where his own evidence was not helpful to his case. I find that he was a credible and believable witness. However, in relation to the specifics of parts of his case, the claimant had limited recollection of the details of events, particularly in relation to the travel time he claimed.

30. The parties agree that the claimant invoiced the respondent for the work he had completed. It is common ground that the work was at least monthly and from May until February, and the claimant invoiced every month.

31. The parties agree that the claimant would be offered work by text, either by Devon Taylor or by another member of staff, who would say '*we are working in Cheltenham next week, are you free on those dates.'*

32. In relation to personal performance of the contract, the claimant said in oral evidence that he could not send a substitute to undertake the work on his behalf. The claimant initially explained that this is because he is highly skilled so he wouldn't be able to find someone with a similar skill level and that the claimant said he didn't undertake the interview to find work for anyone else, and didn't run his own company, so freelancing has been his main source of income, which is why he had a UTR code.

33. In contrast, the respondent says that Mr Phillips did have the ability to arrange for a suitable substitute to perform the services in his place (p52 bundle) and in oral evidence. When Mr Roberston explained how this substituting would work in practice, Mr Robertson explained that if a barista was not available to work an event, then they may suggest a replacement to undertake the work. Mr Robertson confirmed that it would be the respondent who decided or controlled whether that replacement would be offered work.

34. The claimant estimated that there were between 5 and 7 other baristas who would attend events. He explained that he was aware of one event where someone brought an additional staff member to site because they were a barista down, but could not provide an example of substituting.

35. Having heard both the claimant and the respondent, the Tribunal concludes that there was an obligation on the claimant to undertake the work personally. Whilst the respondent says that the claimant was entitled to provide a substitute, this arrangement is more akin to suggesting 'cover'

than a substitute, in that at its highest, the claimant was entitled to suggest the name of a substitute, but the respondent would decide whether to offer them work or not. In my view, this is a step beyond the respondent providing approval for the substitute, and is in fact, the respondent simply offering work to another individual. Overall, I conclude that the nature and degree of substitution demonstrates that personal service of the contract was required.

36. In terms of the work whilst at events, the respondent explained that the Baristas would provide a service. The hours would be agreed by the company, to open and close at a certain time, with a period to set up and breakdown beforehand.

37. In relation to work on shifts, it was the respondent's evidence that the claimant could be sent home during an event if it was quiet. The respondent explained that the Baristas would be paid for a minimum of 4 or 5 hours. But they would not be paid for the remainder of the event if they were sent home early. This was not disputed by the claimant and I accept this was the case.

38. In relation to pay, the claimant accepts that he proposed the rate of pay he would be paid during an interview. Furthermore, by email dated 31 January 2024, the claimant emailed the respondent, and stated that he had '*set a new rate for logistics / haulage of £13 per hour'* and attached these changes in Invoice 11 (p88).

39. By email on 9 February 2024, Mr Robertson disputed the claimant's invoice 11, in relation to the rate for logistics / haulage, where he indicates he will pay £11.50 as it is an unskilled job and would not be paying for travel to and from the event. In this email Mr Roberston confirms he will be providing zero hour contracts with the parameters where we will be paying mileage and rates for non-barista work. In this email he states that 'this will clear up any confusion'.

40. It is common ground that no zero hour contracts were issued. In oral evidence Mr Roberston explained that the zero hours contract would set out the terms of engagement. Mr Roberson was not able to clearly confirm whether the terms of engagement would be the same or different within a zero hours contract, as he confirmed there would be no change to any terms, but was unable to confirm what the terms were. Mr Robertson then stated there would be some changes but was unable to articulate what changes there would be. Overall, this damaged Mr Roberston's credibility. His final position appeared to be that the terms of engagement were going to be the same, except that it would specify that the company did not pay for travel time.

41. By email on 11 February 2024, Mr Robertson responded, confirming that £12 per hour would be paid for van driving. In relation to mileage, he states '*I will of course honour your invoiced rate this time, but moving forward we will agree the mileage to and from events prior to you accepting the work'.*

42. By email dated 26 February 2024, the Claimant states that '*our business arrangement isn't viable for me if I am unable to charge driving time when required. Sometimes this can be almost half of a shift'.*

43. In the same email he states '*Due to the economic reality of our arrangement I feel that I could be legally entitled to travel time.'* and Finally '*I will draft up an invoice for any unpaid, non travel hours'.*

44. By email dated 27 February 2024, Mr Phillips states that Mr Robertson '*previously queried the 0.45 per mile and approved in this email chain, but I will waive it as I did think it was odd when I was told to always invoice to and from the unit'.*

45. It is not disputed that on 27 February 2024, Mr Robertson responded, stating that '*no one gets paid an hourly rate for commuting to and from work'* and '*please raise the cross-country event invoice separately please.'*

46. At page 70 of the bundle, a further email on 27 February 2024, states, *'Fine, I will pay the 14.25 hours.*

47. The course of these emails demonstrates an ability by the claimant to set or negotiate his own rates of pay and I accept that he was able to propose changes in payment terms.

48. In an email dated 27 February 2024 at 17.17 Mr Phillips states that '*I am already working flat out trying to set up a charity and shouldn't have to spend hours outlining a matter of basic HR compliance to you. This in itself should be billable as consultation'*.

49. In a second email of the same date, Mr Roberston states '*paid the two invoices. We will not be requiring your services going forward.'* It is the claimant's case that this was a dismissal because he had sought payment for travel time.

50. Mr Roberston in oral evidence explained that he and his business partner had been discussing winding down the business for some time, and had

made the decision that Mr Phillips services would no longer be needed and the company would be wound up.

51. Mr Phillips says he expected to work at an event in Cheltenham in March 2024 and it is not disputed that this would be a 5 day event. The claimant says that he was not booked for this event because of his request for payment for his travel time. Mr Robertson accepts that Mr Phillips was not booked for the Cheltenham event, but disputed this is because he asked for payment for his travel time. In his oral evidence, Mr Roberston said that the decision to wind up the company was already underway, and the decision was unrelated to Mr Phillips request. However, Mr Robertson was unable to tell the Tribunal when the decision to wind up the decision was made, and why Mr Phillips was not told that his services would no longer be required, in the first email exchange of that day.

52. Mr Robertson initially was unable to confirm whether the Cheltenham event went ahead, however, he subsequently confirmed that it did go ahead but with a skeleton staff. He was not able to explain why Mr Phillips would not be used as part of that skeleton staff. Mr Robertson explained that because the company is for sale, he no longer has access to any of the business documents or email address, and could not check any documents prior to this hearing. However, not withstanding those difficulties, I do not find Mr Roberston's explanation to be credible. The timing of the email confirming that they would no longer require Mr Phillips services was at the end of the day following a number of strongly worded emails, particularly from Mr Phillips.

53. Mr Robertson's claim that the decision had already been made to wind up the business is at odds with his email on 9 February 2024, that zero hour contracts would be issued to all staff and the emails he sent to Mr Phillips between the 11 and 27 February 2024, in which he does not refer to Mr Phillips services no longer being required. I do not find Mr Roberton's explanation to be credible and, in the absence of any credible explanation, I find that Mr Roberston sent the email confirming he would no longer require Mr Phillip's services because he requested payment for his travel time.

54. In relation to the damages claimed by the Claimant, he says that he is owed time for driving from the unit to events. However, the Claimant confirms that he did not keep a log of his travel, and he is unable to define what the relevant travel time would be for each of these events.

55. The claimant gave oral evidence regarding each of the invoices in relation to whether the mileage recorded on the invoice was indicative of the overall

travel time for these events, and he was unable to provide that confirmation. The claimant was unable to recall whether the mileage referred simply to travel to the unit, or to the event, or multiple trips once at the event with any clarity. In relation to invoice 6 he was unable to recollect where the event took place.

56. Mr Robertson for the respondent was unable to provide any clarity as to the travel time to and from the events, as the respondent did not keep a log of the travel time, as in his view, travel time was not chargeable.

57. In relation to Invoice 10, in oral evidence, the claimant stated that his travel time included a claim for walking 45 minutes to the train station from where he parked his car, and travel by train for 5.5 hours, for which he had been paid at a half rate of £7.50 per hour. The respondent did not dispute that these timings were accurate. For invoice 11 and invoice 12, the claimant confirms that all travel had been paid for.

58. The claimant says that he took a four hour a week Sunday job whilst engaged with Stubborn Rhino. He had planned to open his own coffee shop, and felt this would be good experience. However, his dismissal from his role at Stubborn Rhino resulted in him having financial difficulties. He explained he then lost further money through aggressive stock market trading because he was in financial difficulties.

59. When asked about the delay in making a claim to the Tribunal, the claimant says that he was flooded in December 2023. In February 2024, the claimant was finding his situation too overwhelming and could not handle the administrative tasks around making a claim because he had to find more work.

60. It is not disputed that the claimant then started to work regularly at a new workplace, Café Violotti, from 19 April 2024.

61. The claimant explained that he had been unable to engage with ACAS previously because of his mental state, and his other commitments, as he had started an opera project with a view to setting this up as a charity.

62. The Claimant was asked when he became aware of an ability to make a Tribunal claim, and he responded that it was not a matter of awareness, but that it occurred to him that he probably should. He described that there came a point in April 2024 where he felt, '*I have actually been wronged and really struggling to make up for my income, I should probably make some sort of claim'*.

63. The Claimant explained that he did not become aware of the time limit properly until the case management hearing. However, he acknowledged that he probably had read something about it earlier, but it hadn't born any importance to him.

Conclusions.

Employment Status

64. The first question to determine is whether the claimant is a worker. As set out above, for the claimant to meet the definition of the worker under s230(3) ERA, he must have a contract of employment.

65. That employment contract may be express or implied, and have been oral or in writing (s230(2)) ERA. I have accepted that there was no written terms of engagement. However, it is common ground between the parties that there were terms of engagement which the claimant and respondent were to comply with. Neither party was able to set out clearly the terms of engagement, however, it is not disputed, and I accept, that the claimant was required to attend at a time specified by the respondent, to provide barista services, and pack up the equipment, before leaving at the end of an event. Further, that mileage would be paid, but accommodation could also be offered.

66. Overall, I find that there was an express contract formed between the parties to provide services at the events where the claimant was booked.

67. The parties have been clear that there was no requirement on the respondent to provide work or the claimant to accept work. As a result, there was no 'mutuality of obligation'. I am therefore not satisfied that there was an overarching contract for services over the period of Mr Phillips' engagement with Stubborn Rhino. However, it appears that there was a requirement for the claimant to undertake the work during each event. I have found that once booked for the event, there were specific requirements for the claimant to undertake his role, including starting times and finishing times set out by the respondent. Furthermore, Mr Robertson committed to a minimum number of hours work, prior to baristas being sent home if there was insufficient work. This is consistent with the claimant being subject to a worker contract for each discrete event, and I find that there was a contract in place in those terms.

68. In relation to the personal performance of the work or services, as set out in paragraph 35 above, I have found that there was a requirement on the claimant to personally perform the work.

69. Finally, the Tribunal has to determine whether the claimant is a worker or in business dealing with a client. In this case, the respondent has always consistently maintained that the claimant was an independent contractor. The claimant has been less consistent regarding his explanation of the relationship with the respondent.

70. In *Cotswold Developments Construction Ltd v Williams 2006 IRLR 181, EAT* , the integration test was set out by Mr Justice Langstaff, as follows:

"it is possible (in most cases) to determine whether a person is providing services to a customer or client by focusing on whether that individual actively markets his or her services as an independent person to the world in general (and thus has clients or customers) or whether he or she is recruited to work for the principal as an integral part of its organisation."

71. It is not disputed that the claimant invoiced the respondent, and that the respondent paid the claimant's invoices within the time frame specified. Furthermore, it is the claimant's case that he had set out the hourly rate he would accept at the outset of the relationship. Subsequently, the claimant invoiced for haulage hours at a rate he determined, in his email of 31 January 2024. Whilst that rate was not accepted, neither was the respondent's initial response of £11.50 per hour, with the issue resolving with a payment of £12 per hour for haulage and logistics. This ability to negotiate and claim for additional time supports the claimant being an independent contractor.

72. The claimant had a second barista role, working for a different organisation, and there was no conflict with holding those two roles, together with his other casual contracts. The claimant was entitled to chose when and on which events he worked, and was able to choose whether to stay in accommodation or claim mileage to an event.

73. The Tribunal accepts that there was a degree of integration into the respondent's business, as the claimant became insured on the company van, and undertook driving to and from the unit with all equipment. However, the Tribunal was not provided any evidence that his role within the business progressed beyond barista activities and transporting equipment. There was no involvement in the planning or marketing of activities.

74. This is a finely balanced decision, in particular because the parties were not able to provide a clear and consistent narrative of the role and expectations at events. Mr Phillips' evidence suggested a high degree of autonomy regarding the services provided when on site, including with flexibility regarding times for set up and break down depending on the circumstances,

as well as autonomy to decide to undertake supply runs and to chose whether to commute or have accommodation provided.

75. However, there was no indication that Mr Phillips was undertaking his barista work as an independent person marketing himself in that role. Instead, he was performing work as a barista for Stubborn Rhino, in the manner they requested and at the time and place that they sought. Whilst there was some degree of autonomy, I accept that Mr Phillips was not truly providing services to a customer or client. It was clear from the evidence of Mr Phillips that he expected all his baristas to be engaged and working on the same terms. Given Mr Phillips ability to change his terms or the working environment, I find that he was recruited to work within the respondent organisation and conclude that this limb of the test is met.

76. I therefore accept that the claimant was a worker under s230 ERA 1996, on a discrete contract for each event. Between events, there was no ongoing worker contract between the claimant and the respondent.

Time Limits

77. The claimant argues that the respondent made unlawful deductions from his wages as he was not paid for his travel for the events billed in invoices 1 – 10.

78. As set out in paragraph 4 above, any action that took place prior to 8 February 2024 is potentially out of time. Absent an extension of time, invoices 1 – 9 are out of time, having been submitted with payment due by, or before 9 January 2024. Invoice 10 is dated 30 January 2024, with a request that the invoice be paid by 9 February 2024. Within late evidence, Mr Phillips bank statement shows that this wage was paid on 9 February 2024.

79. I have considered whether the payments in invoices 1 – 9 are properly a series of deductions and conclude that they are not. This is because I have found that there was no overarching umbrella contract to retain the claimant's services, and a contract was only formed when the claimant agreed to undertake work at each event. In those circumstances I find that this breaks any continuity of deductions.

80. The claimant explained that the reason he did not make a claim to the employment tribunal earlier was because he felt overwhelmed by administrative tasks, and he needed to focus on finding other work. The claimant explained that he has Attention Deficit and Hyperactivity Disorder and had difficulties with medication and his mental health during this time. Although the claimant did not expressly provide this as a reason for delay,

the Tribunal accepts that this may have had an impact on his ability to meet the deadline. However, the claimant also explained that he was busy with other commitments, for example seeking to set up an opera charity. The claimant provided very limited medical evidence, and nothing from the period up until the submission of this appeal.

81. The Tribunal heard evidence from Ms Thompson that the claimant was upset during this period and made a series of poor decisions as a result of his financial difficulties. I accept that this is the case.

82. The claimant acknowledged that he was familiar with the ACAS website, having quoted extracts from this when communicating with the respondent in February 2024, and had demonstrated an ability to research and understand his own rights in relation to employment law. The claimant said that he had likely read about time limits for a claim but that this was not something that had concerned him.

83. Notwithstanding the claimant's explanation of his mental health difficulties and his need to find other roles, I was not persuaded that it was not reasonably practicable for the claimant to have made his employment tribunal claim within time. It is his own evidence, that he had not decided to do so until April 2024, despite having demonstrated a knowledge of the ACAS website. I do not accept that the claimant was unaware of his ability to enforce his employment rights, nor that he would not have been able to do so, had he decided to at an earlier stage. Given the claimant was able, both to apply for jobs and to dedicate himself to his opera project, I do not accept that his difficulties with administrative tasks was at a stage which would have prevented him from filing a claim.

84. I therefore do not extend time for this claim and the unlawful deduction of wages claim for invoices 1- 9 fails as it is out of time.

Unlawful deduction of wages

85. The claimant says he suffered deductions from his wages due to the respondent failing to pay for his travel time. However, the claimant does not include any sums for unlawful deductions in his schedule of loss for this hearing.

86. In submissions, in relation to invoice 10, the claimant argues that he should have been paid minimum wage for his travel time during this event. In his oral evidence, he explained that he was claiming for his 45 minute walk to the station, and his travel time by train, all of which he says should have been paid at national minimum wage. The respondent did not dispute these

claimed travel times and I therefore accept that this is the time that the claimant spent travelling.

87. In the course of the hearing, the parties agreed that the national minimum wage at the appropriate time was £11.44 per hour.

88. The claimant therefore says his travel time should have been paid 5.5 hours by train and 0.75 hours by foot all at £11.44 per hour. He was paid 5.5 hours at £7.50 per hour. Overall, this represents a claimed deduction of £30.25.

89. The respondent argues that there was no deduction, as the claimant was paid in excess of the national minimum wage over the course of the full event. However, for this event, his total claimed working hours is 10.75 hours (5.5 hours + 4 + 0.75). At national minimum wage he would have received £122.98 had he been paid at minimum wage, rather than the £93.25 he received through his invoice. In this regard, the respondent's contention is without merit.

90. In relation to this invoice, the difference between the total hours of travel paid at national minimum wage, as opposed to the total amount for the full event to be paid at minimum wage is negligible (less than £1), and I therefore award the claimant £30.25 as claimed.

Detriment (National Minimum Wage Act 1998 section 23)

91. It is the claimant's case that he was dismissed from his role because he requested payment at National minimum wage for his travel time.

92. In his email dated 26 February 2024, the claimant sought payment for his travel time and explained that he believed he should be legally entitled to his travel time. I am satisfied on the balance of probabilities that the claimant was taking action or proposing to take action to secure his right to be paid national minimum wage, pursuant to s23(1) of the NMW act 1998.

93. The claimant says that the respondent terminated his contract as a result of him seeking to enforce his right to national minimum wage. The respondent refutes this. I have found that the decision that Mr Phillips would no longer be required on 27 February 2024 at 18.03 was as a result of his request for payment for his travel time.

94. I have also found that Mr Phillips is a credible witness. I therefore accept that he made that claim in good faith. No other reason for him making this claim has been provided.

95. It is not disputed that the respondent told Mr Phillips that his services will no longer be required, and I have found that the respondent did so. I also find as a matter of fact, that the reason this email was sent was because the claimant both sought payment for travel time at least at national minimum wage and implied there was a legal challenge available if that payment was not made. I make this finding on the basis of the email trail provided in evidence, and Mr Roberton's failure to give any other plausible explanation.

96. The claimant has identified the detriment he experienced as the termination of his worker contract. However, I have found that there was no overarching or umbrella contract between the claimant and respondent between events, given that there was no requirement on the respondent to offer work, nor on the claimant to accept work. I have found only that a worker contract exists during each individual assignment after the claimant was booked for the event, because the claimant was a casual worker.

97. The claimant has not provided evidence to confirm that he was booked for the Cheltenham event, despite claiming to have been so booked during the case management hearing. In oral evidence, he confirmed only that he was aware it was going ahead, and that he had expected to work it. I do not accept that he had yet been booked for that event on the evidence provided to me, and therefore, at that relevant time he was not in fact party to a workers contract, and was therefore not a worker pursuant to s230(3) of the Employment Rights Act 1996. Further, as there was no current contract for services, there is no termination of a workers contract.

98. Accordingly, this claim is not well founded and must fail.

Approved by:

Employment Judge Scott
20/10/2025

Judgment sent to parties on
27 October 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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