EMPLOYMENT TRIBUNALS

Claimant: **Mr N Chukwu**

Respondent: **Newsteam Group Ltd.**

Heard at: **East London Hearing Centre**

On: **5 November 2025 (remotely by video)**

Before: **Employment Judge S Shore**

Representation

For the Claimant: **In Person**

For the Respondent: **Mr J Kennett, Managing Director**

JUDGMENT

The Judgment of the Employment Tribunal is that:-

(1) The correct name of the respondent is "Newsteam Group Ltd." The Tribunal's records will be amended accordingly.

(2) The claimant's claim of unfair dismissal under section 94 and section 95(1)(c) of the Employment Rights Act 1996 ("ERA 1996") fails. The claimant was not an employee of the respondent as defined in section 230 of the Employment Rights Act 1996. If the claimant had been an employee of the respondent, he did not have two years' continuous service with the respondent, so the Tribunal would not have jurisdiction to hear the case under section 108 ERA.

(3) The claimant's claim of breach of contract (damages for a replacement tyre) under Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ("the Order 1994") fails. The

claimant was not an employee or worker of the respondent as defined in section 230 of the ERA 1996.

(4) The claimant's claims of unauthorised deduction from wages under section 13 of the ERA 1996 fail. The claimant was not an employee or worker of the respondent as defined in section 230 of the ERA 1996.

(5) As the Tribunal has dismissed all the claimant's claims, there is no requirement to hold a remedy hearing.

REASONS

Background

1. The claimant's employment status was in dispute. His case is that he was an employee of the respondent. He worked one shift for the respondent on 27 March 2025. On the shift, his car hit a pothole and punctured a tyre. He could not work the subsequent shift and was not engaged again by the respondent. The respondent asserts that the claimant was a self-employed contractor.

2. The claimant started early conciliation with ACAS on 5 May 2025 and obtained an EC certificate dated 16 June 2025 [23]. He presented his ET1 on 19 June 2025 [9-22]. The claim was coded by the Tribunal as being for unfair dismissal and unauthorised deduction from wages.

3. In his ET1 at paragraph 9.2 [16], the claimant stated, "*I am seeking compensation for one full day of unpaid work (estimated at £80) completed on 12 April 2025, plus £120 for a tire I had to replace due to poor road conditions on the delivery route I was assigned. I also request my tribunal fee to be reimbursed if awarded. Total compensation sought: £180. Amount requested £200.*"

4. The Tribunal sent the parties a Notice of Claim dated 27 June 2025 [3-5], which set a final hearing date for the claim of 5 and 6 November 2025. The Notice also made the following orders:

    4.1 The respondent must file an ET3 by 25 July 2025;

    4.2 The claimant must send the respondent a document setting out how much compensation he is claiming by 8 August 2025;

    4.3 The parties must exchange copies of all the documents they intended to rely on to each other by 22 August 2025;

    4.4 The parties must agree which documents were going to be included in the earing bundle and the respondent had to compile the bundle and send the claimant a copy by 5 September 2025; and

    4.5 The parties must exchange witness statements by 19 September 2025.

5. The respondent submitted an ET3 on 18 July 2025 [24-32], in which it denied that the claimant was an employee or worker for it.

6. On the morning of the hearing, I received:

   6.1 A bundle of 83 pages of documents with an index; and

   6.2 A witness statement from Jon Kennett, Managing Director of the respondent.

7. The claimant did not submit a witness statement.

8. I caused an email to be sent to the parties on the morning of the hearing with a draft List of Issues for them to consider and discuss at the hearing.

The Law

9. The statutory law in this case is contained within the ERA 1996, and the Order 1994.

10. For the purposes of the unfair dismissal claim, the relevant sections of the ERA 1996 are section 98, section 108, and section 230.

Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical, or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

11. Section 108(1) of the Employment Rights Act 1996 provides:

108 Qualifying period of employment.

(1) Section 94 [the right to bring an unfair dismissal claim] *does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.*

12. Section 230(3) of the Employment Rights Act 1996 ("ERA 96") provides in part;

230 Employees, workers etc.

(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.

13. The relevant statutory law for the breach of contract (damage to tyre) claim is Article 3 of the Order 1994:

Extension of jurisdiction

3. *Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee's employment.

14. The relevant statutory law for the unauthorised deduction of wages claim is sections 13 and 27 of the ERA 1996:

13 Right not to suffer unauthorised deductions.

(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…

27 Meaning of "wages" etc.

(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise…

…but excluding any payments within subsection (2).

(2) Those payments are—

(b) any payment in respect of expenses incurred by the worker in carrying out his employment…

15. In **Autoclenz Ltd v Belcher and Others** [2011] ICR 1157, the Supreme Court held that the written agreement is not decisive in determining employment status, and the relative bargaining powers of the parties must be considered. In paragraphs 18 and 19 of his judgment, Lord Clarke approved the decision of McKenna J in the case of **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497.

16. There are three conditions for the existence of a contract of employment set out by McKenna J in **Ready-Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance**, albeit in the old-fashioned terminology of 'master', 'servant' and 'contact of service', rather than 'employer', 'employee', and 'contract of employment':

"(1) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master.

(2) He agrees, expressly or impliedly, that in the performance of that service he will be subject to that other's control in a sufficient degree to make that other master.

(3) The other provisions of the contract are consistent with its being a contract of service."

17. The above formulation has been binding for a long time and is often the starting point for arguments about status.

18. In **Uber BV and ors v Aslam and ors** [2021] ICR 657, the Supreme Court held that 'worker' status is a question of statutory, not contractual, interpretation, and it is therefore wrong in principle to treat the written agreement as a starting point. The following are some relevant extracts from of the speech of Lord Leggatt:

> *"38. The effect of these definitions, as Baroness Hale of Richmond observed in Bates van Winkelhof v Clyde & Co LLP [2014] UKSC 32; [2014], paras 25 and 31, is that employment law distinguishes between three types of people: those employed under a contract of employment; those self-employed people who are in business on their own account and undertake work for their clients or customers; and an intermediate class of workers who are self-employed but who provide their services as part of a profession or business undertaking carried on by someone else. Some statutory rights, such as the right not to be unfairly dismissed, are limited to those employed under a contract of employment; but other rights, including those claimed in these proceedings, apply to all "workers".*
>
> *….*
>
> *69. Critical to understanding the Autoclenz case, as I see it, is that the rights asserted by the claimants were not contractual rights but were created by legislation. Thus, the task for the tribunals and the courts was not, unless the legislation required it, to identify whether, under the terms of their contracts, Autoclenz had agreed that the claimants should be paid at least the national minimum wage or receive paid annual leave. It was to determine whether the claimants fell within the definition of a "worker" in the relevant statutory provisions so as to qualify for these rights irrespective of what had been contractually agreed. In short, the primary question was one of statutory interpretation, not contractual interpretation.*
> *….*
>
> *75. The correlative of the subordination and/or dependency of employees and workers in a similar position to employees is control exercised by the employer over their working conditions and remuneration. As the Supreme Court of Canada observed in McCormick v Fasken Martineau DuMoulin LLP 2014 SCC 39, para 23: "Deciding who is in an employment relationship ... means, in essence, examining how two synergetic aspects function in an employment relationship: control exercised by an employer over working*

conditions and remuneration, and corresponding dependency on the part of a worker. ... The more the work life of individuals is controlled, the greater their dependency and, consequently, their economic, social and psychological vulnerability in the workplace ..."

…

87. In determining whether an individual is a "worker", there can, as Baroness Hale said in the Bates van Winkelhof case at para 39, "be no substitute for applying the words of the statute to the facts of the individual case." At the same time, in applying the statutory language, it is necessary both to view the facts realistically and to keep in mind the purpose of the legislation. As noted earlier, the vulnerabilities of workers which create the need for statutory protection are subordination to and dependence upon another person in relation to the work done. As also discussed, a touchstone of such subordination and dependence is (as has long been recognised in employment law) the degree of control exercised by the putative employer over the work or services performed by the individual concerned. The greater the extent of such control, the stronger the case for classifying the individual as a "worker" who is employed under a "worker's contract".

….

91. Equally, it is well established and not disputed by Uber that the fact that an individual is entirely free to work or not, and owes no contractual obligation to the person for whom the work is performed when not working, does not preclude a finding that the individual is a worker, or indeed an employee, at the times when he or she is working."

19. I also considered the cases of **Clark v Oxfordshire Health Authority** [1998], IRLR 125 CA, **Pimlico Plumbers Ltd v Smith** [2018] UKSC 29, and **Ter-Berg v Simply Smile Manor House Ltd and ors** [2023] EAT 2.

The issues

20. It was agreed that the issues in the case were those contained in the Tribunal's email to the parties of 5 November 2025:

1. Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

1.2 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

2. Unfair dismissal

2.1 If the claimant was an employee of the respondent, did he have sufficient service to bring a claim of unfair dismissal?

2.2 If yes, was the claimant dismissed?

2.3 If the claimant was dismissed, what was the reason or principal reason for dismissal?

2.4 Was it a potentially fair reason?

2.5 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

3. Remedy for unfair dismissal

3.1 Does the claimant wish to be reinstated to their previous employment?

3.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.5 What should the terms of the re-engagement order be?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.6.1 What financial losses has the dismissal caused the claimant?

3.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

3.6.3 If not, for what period of loss should the claimant be compensated?

3.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

3.6.5 If so, should the claimant's compensation be reduced? By how much?

3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.6.7 Did the respondent or the claimant unreasonably fail to comply with it?

3.6.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

3.6.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

3.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3.6.11 Does the statutory cap of fifty-two weeks' pay apply?

3.7 What basic award is payable to the claimant, if any?

3.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

4. Breach of Contract

4.1 If the claimant was an employee of the respondent, did this claim arise or was it outstanding when the claimant's employment ended?

4.2 Did the respondent do the following:

4.2.1 Fail to reimburse the claimant for the cost of a replacement tyre for his vehicle?

4.3 Was that a breach of contract?

4.4 How much should the claimant be awarded as damages?

5. Unauthorised deductions

5.1 If the claimant was a worker for the respondent, did the respondent make unauthorised deductions from the claimant's wages and if so, how much was deducted?

5.2 Was any deduction required or authorised by statute?

5.3 Was any deduction required or authorised by a written term of the contract?

5.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

5.5 Did the claimant agree in writing to the deduction before it was made?

5.6 How much is the claimant owed?

21. As I found that the claimant was not an employee or worker of the respondent's, I did not have to consider the merits of the substantive claim or matters of remedy.

The Hearing

22. The hearing started at 10:05am on the first scheduled day. I confirmed with the parties that:

    22.1 Both had received the email from the Tribunal with the draft List of Issues.

    22.2 The claimant had received the respondent's bundle and Mr Kennett's witness statement.

    22.3 The claimant had not produced his own witness statement.

    22.4 The correct name of the respondent is **Newsteam Group Ltd.**

    22.5 The draft List of Issues was agreed.

    22.6 The claim for the cots of a replacement tyre could not be a claim of unauthorised deduction from wages; it could only be a breach of contract claim.

23. The respondent had produced a joint bundle of 84 pages. If I refer to a document from the bundle, we will record the page number(s) of the document in square brackets. The parties confirmed that there were no additional documents.

24. The claimant is unrepresented. I reminded him that the Tribunal operates on a set of Rules. Rule 3 sets out the overriding objective of the Tribunal Rules (their main purpose), which is to deal with cases justly and fairly. It is reproduced here:

> ***Overriding objective***
>
> *3.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
>
> *(2) Dealing with a case fairly and justly includes, so far as practicable—*
>
> *(a) ensuring that the parties are on an equal footing,*
>
> *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,*
>
> *(c) avoiding unnecessary formality and seeking flexibility in the proceedings,*
>
> *(d) avoiding delay, so far as compatible with proper consideration of the issues, and*
>
> *(e) saving expense.*
>
> *(3) The Tribunal must seek to give effect to the overriding objective when it—*

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal.

25. The claimant gave evidence on affirmation. He had no witness statement, so I asked him some questions. Mr Kennett asked the claimant some cross-examination questions.

26. I then heard evidence from Jon Kennett, the Managing Director of the respondent who gave evidence on affirmation. His evidence in chief was a witness statement dated 19 September 2025 that consisted of nineteen pages.

27. Mr Chukwu had no questions for Mr Kennett. I asked him two questions.

28. Mr Kennet made brief closing submissions. Mr Chukwu declined to make any closing statement.

29. I retired to consider my decision at 10:51am and asked the parties to return at 1:00pm. At the appointed time, I delivered this Judgment and Reasons. Mr Kennett asked for the Reasons to be put in writing.

Findings of Fact

Preliminary Comments

30. All findings of fact were made on the balance of probabilities. If a matter was in dispute, I will set out the reasons why I decided to prefer one party's evidence over the other. If there was no dispute over a matter, I will either record that with the finding or make no comment as to the reason that a particular finding was made. I have not dealt with every single matter that was raised in evidence or the documents. I have only dealt with matters that I found relevant to the issues I had to determine. No application was made by either side to adjourn this hearing to complete disclosure or obtain more documents or call additional evidence, so I have dealt with the case based on the documents produced to me, the witness evidence produced, and the claim as set out in the List of Issues.

Undisputed Facts

31. I should record as a preliminary finding most of the relevant facts were not disputed, not challenged, or were agreed by the parties. I therefore make the following undisputed findings of fact:

51.1. The respondent is a newspaper and magazine delivery company.

51.2. The claimant responded to an advert on Indeed and rang the respondent on 26 March 2025. A transcript of the telephone conversation was produced and agreed to be accurate [38-42].

51.3. During the conversation on 26 March 2025, the respondent's agent stated: "So this job is self-employed. Have you ever been self-employed?" [39].

51.4. The claimant confirmed that he had not. The agent sent him a contract [33-37] headed "Independent Contractor Agreement" whilst the telephone conversation was ongoing and talked the claimant through its provisions. The claimant was required to deliver newspapers and magazines between 2:00am and 7:00am 7 days per week for £40.00 per shift. He was required to use his own vehicle for the deliveries.

51.5. The claimant accepted in answer to a question from me that he did not read the document before signing it. The claimant's electronic signature is on the Agreement [37].

51.6. On the first page of the contract [33] it states:

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

51.7. The claimant's only shift for the respondent was on 27 March 2025. During the shift, he ran into a pothole that, unbeknown to him at the time, punctured the tyre on the claimant's vehicle.

51.8. The following day, the claimant started to get ready for his shift but noticed the puncture for the first time. He contacted his supervisor to say that he would try and fix the puncture but was unable to do so. The claimant's unchallenged evidence was that the supervisor said the respondent would organise a replacement.

51.9. The claimant attempted to log in to the respondent's app the following day but was unable to do so. He was told that because he had missed a shift, he would have to apply again.

51.10. The claimant was not paid the £40.00 for his shift on 27 March 2025. The respondent invoked the Deductions clause in the contract [34], which stated:

> "*If the contractor does not complete the contracted work on any day/s and the work has to be completed by the client or another party the Contractor will not be paid for that day/s and will be*

charged 2 times that day's planned earnings or 2 sevenths of the minimum weekly payment – whichever is higher."

51.11. In his Schedule of Loss [43-45] the claimant claims £60.00 for the replacement tyre and £150.00 for lost earnings.

Disputed Facts

Employee/Worker Status

52. The burden of proof is on the claimant to show that he was a worker or employee.

53. I find that the claimant's evidence in chief on the issues of whether he was a worker, or an employee of the respondent lacked detail and specificity. His evidence was limited to an assertion of status. He accepted he did not read the contract with the respondent before signing it and believed that self-employment only meant that he was responsible for his own tax.

54. I find that the Independent Contractor Agreement [33-37] set out the terms agreed between the parties and that the written agreement contained all the terms of the contract. I was not satisfied that there were any additional contractual terms agreed, or variations to the written terms agreed verbally, with the recruiters or any other relevant personnel. I was able to make that finding because I had the agreed transcript of the telephone conversation on 26 March 2025 [38-42].

55. The Agreement contained a clear substitution clause which was inconsistent with an obligation to perform services personally, which is a requirement of worker status. A Tribunal may decide that the substitution clause does not reflect the reality of the working relationship, but I find that, in this case, it did. I find that there was a genuine and unfettered right to substitute another person to do the work and this is, evidentially, inconsistent with an obligation personally to do the work.

56. In his oral evidence, the claimant accepted that he could have arranged for another person to cover his work at any time. His evidence on this point was unequivocal – he confirmed that the provisions concerning the arrangement of a substitute to carry out his role were clear.

57. Taking account of the totality of the evidence before me, I find that the claimant had the right to perform the contract personally or to arrange for a substitute to perform it. This was expressly included in the written terms agreed and form part of the agreement between the parties. This right was inconsistent with the obligation for personal performance by the claimant.

58. The Claimant was neither an employee nor a worker and therefore his claims are dismissed as the Tribunal does not have jurisdiction to hear them.

Applying the findings to the law and the issues

59. Applying my findings to the multi-factual tests outlined in cases such as **Autoclenz** we find that our factual findings lean heavily towards the claimant being a self-employed contractor and not an employee or worker.

60. As the claimant was not a worker or an employee of the respondent (under either the definition in section 230 of the ERA 1996, all his claims fail at that point.

Approved by:
Employment Judge S Shore
Date: 5 November 2025