



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. K. Patterson

**Respondent:** Quinns Infrastructure Services Limited

**Heard at:** London Central

**On:** 10 January 2020

**Before:** Employment Judge Goodman

## Representation

**Claimant:** did not attend

**Respondent:** Mr D. Bunting, counsel

## JUDGMENT

1. The unlawful deductions from wages claim is dismissed because the claimant was not an employee or worker of the respondent.
2. The unfair dismissal claim is dismissed because the claimant lacked two years qualifying service.

## REASONS

1. The claimant presented a claim to the tribunal on 30 April 2019 for underpaid wages for the period he worked on railway maintenance for a 12 week period in the early months of 2019. On 12 April he and six others walked off the job because of successive underpayments of their weekly wages.
2. The respondent replied that they did not employ the claimant, nor did they have any other contractual relationship with him. Their case is that they contracted with DTP Rail Ltd to supply workers. They assert the claim should be directed to DTP.
3. The claimant did not attend today. I caused the clerk to leave a number of messages, in case there had been some transport delay (he lives on

Tyneside). I noted from the file that he did not reply to a letter from Judge Glennie in August 2019 asking him to supply a calculation of what was owed. Nor did he respond when the hearing on 19 August 2019 was postponed for want of judges and the parties were asked to send details of their availability for listing a further date. After waiting 30 minutes, the hearing began at 10.30 a.m.

4. I gave judgment with short reasons on the day. I was not asked for written reasons but have prepared them so the claimant understands why his claims have been unsuccessful.
5. I read a bundle of documents containing emails between Quinns, the respondent, and DTP, invoices and a purchase order. I also read a witness statement from Ms Samantha Young, who attended the hearing and answered some questions.
6. A claim for unpaid wages can be brought by a worker against his employer under sections 13-27 of the Employment Rights Act 1996. "Worker" is defined in section 230(3)(b) of the Act as one who 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."
7. The question therefore is whether there was a contract between the claimant and Quinns, or if not, whether one must be implied to give business efficacy to the arrangement. Tribunals should be alert to sham contracts which cover up the real relationship between the parties. I was referred to *James v Greenwich Londn Borough Council* (2008) ICR 545.
8. The story starts in January 2019 with DTP chasing Quinns about a request for labour to supplied for planned maintenance in Newcastle. Quinns replied saying they could only offer payment after 60 days. DTP agreed, and would supply subject to a purchase order from Quinns. There is a purchase order dated 18 January 2019 for 4 labourers, 4 civil operatives and 1 supervisor for one week for lighting columns replacement. At the bottom, and on the covering email, is written "Purchase terms 60 days from end of the month. Agreement that QIS will not poach DTP staff and DTP will not liaise directly with QIS clients".
9. There are then successive invoices from DTP to Quinns listing the men and hours worked, giving a total and adding VAT. In March there are some emails about paying a higher rate for weekend working. DTPs managing director, Darren Pugh, wrote "from the first weekend the guys have worked

for you, you have still never sorted there extra monies out, after discussions over the weekend rate with Gary we was informed they would get it the following week, 3 weeks down the line we still haven't received there weekend rate..". There are also emails from DTP's payroll clerk asking a reply or she would miss the cut off for wages "which will reflect on the lads payments for this week".

10. By 12 April, when the men refused to work because of underpayment, and on 18 April the claimant emailed Quinns to ask for outstanding pay of 60 hours at £18 per hour, £1,080. Samantha Young of Quinns replied that they had approved the hours and he should work with DTP direct. DTP (by Darren Pugh) emailed Ms Young that Quinns had failed to make the first payment, adding "sending hours over is only to confirm and doesn't pay my lads or my bills".
11. Ms Young's evidence was that Quinns ended its relationship with DTP on 17 April. She told the tribunal in answer to a question (as her witness statement was silent on the point) that Quinns has paid all DTP's invoices for the work, but not when.
12. In the absence of the claimant or any documents from him, it is unclear what arrangement he had with DTP and whether he worked under a contract of employment or for services. However, the claimant knew from the response to his claim that Quinns denied he was employed. He could have supplied information if he did not have a contract with DTP. I have considered whether DTP was merely a payroll company, processing wages. The references to poaching workers and customers in the invoice, and Mr Pugh speaking of "my lads" in his emails, suggests the workers did have a contract for services with DTP, who in this case supplied them to contractors such as Quinns when they needed labour for particular periods; it is possible that at other times DTP had its own contracts for which labour was required, but no finding can be made in the absence of evidence..
13. On the evidence I conclude on a balance of probability that the claimant was employed by, or was a worker for, DTP when performing work on a contract between Quinns and (I assume) Network Rail. Had he been here, I would have considered adding DTP to the claim. In his absence I do not. This is because it is possible he has in fact been now paid by DTP (given that Ms Young told the tribunal that all the DTP invoices had been paid) and he has forgotten to tell the tribunal. Or he may have decided that a claim against DTP is futile, as I note from the Companies House website that there is a proposal to strike off and the company address is a PO Box at Companies House, suggesting the company is no longer trading.
14. The wages claim is dismissed because it is not established that the claimant was the respondent's worker as defined by section 230. The unfair dismissal claim is dismissed because he was not employed by the respondent. In any event he lacked two years qualifying service.
15. The respondent asked the tribunal to make an order for costs. As the claimant was not here to respond to any application, I directed that the respondent should make its application in writing in 14 days, and the claimant would have 14 days to reply to any application, and a decision

would be made without a hearing unless either party asked for one.

Employment Judge Goodman

Date 13 January 2020

JUDGMENT SENT TO THE PARTIES ON

16 January 2020

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FOR THE TRIBUNAL OFFICE