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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109645/2021

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Held in Edinburgh on 25 November 2021

Employment Judge R King

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Callum Coutts

**Claimant
In person**

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Bay Gardens

**Respondent
Represented by
Christopher Coutts**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claim is dismissed

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REASONS

Introduction

1. This is a claim for unpaid wages. The respondent denies that the claimant was its employee or its worker and denies that he was due any wages whatsoever for the work in question.

2. The claimant gave evidence on his own behalf and Christopher Coutts gave evidence on behalf of the respondent, which is the business that he owns and runs as a sole trader. No documents were lodged by either party.

Relevant law

5 Employment status

3. Section 203 of the Employment Rights Act 1996 provides: -

“(1) In this Act “employee” means an individual who has entered into or works under a contract of employment.

- 10 (2) In this Act a “contract of employment” means a contract of service or apprenticeship, whether express or implied and, (if it is expressed) whether oral or in writing.”

4. The classic description of a contract of employment is set out in the judgment of McKenna J in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 10 ER 433, QBD** in which he stated:-

“A contract of service exists if three conditions are fulfilled.

- 20 i. *The servant agrees that, in consideration of a wage or other remuneration, he will provide his own working skill in the performance of some service for his master.*
- ii. *He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other’s control to a sufficient degree to make that other master.*
- 25 iii. *The other provisions of the contract are consistent with its being a contract of service... Freedom to do a job either by one’s own hands or by another’s is inconsistent with a contract of service, though a limited or occasional power of delegation may not be.”*

5. 'Worker' status on the other hand reflects the fact that some individuals, while not enjoying the range of protections afforded to full-blown employees are nevertheless entitled to certain protections.

5 6. A worker is defined under section 230(3) of the Employment Rights Act 1996 as:

“an individual who has entered into or works under (or where the employment has ceased, worked under):

(a) a contract of employment, or

10 *(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”*

15 The right not to suffer unauthorized deductions

7. Section 13 of the Employment Rights Act 1996 provides as follows: -

“13. Right not to suffer unauthorised deductions.

20 *(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

25 *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

30 *(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

5 (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”*

Section 27(1)(a) of the 1996 Act provides that “wages” includes: -

“any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise”.

10 **Issues**

8. Was the claimant an employee or a worker under a contract with the respondent such that he was entitled to be paid for the work done?
9. If so, what is the amount of the payment of wages he is entitled to?

Findings in fact

15 The Tribunal makes the following findings in fact:

10. The claimant and Christopher Coutts ("Mr Coutts") are brothers. At all material times related to this claim, the claimant worked full time as a cleaner at Rosyth Dockyards.
 11. Mr Coutts is the sole trader owner of the respondent business, which operates in the Dalgety Bay area and provides gardening and landscaping services, including lawn cutting, topiary, tree cutting, slabbing, mono-blocking, decking and gutter clearing. Its business activities do not include house removals.
 12. On 14 April 2021, Mr Coutts telephoned the claimant at approximately 5.15 p.m. At that time the claimant was at his place of work at Rosyth Dockyard. Mr Coutts explained that he was assisting his partner to move home and he asked the claimant if he was willing to help with moving her furniture. The claimant agreed. Both individuals understood that this task would take
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only a few days to complete and that the claimant's assistance would not be required beyond its completion.

13. Mr Coutts received no payment from his partner for assisting with her house move. In addition, no agreement was made between the claimant and Mr
5 Coutts that the claimant would be paid for his help. Mr Coutts did however inform the the claimant that he and his partner intended to give him a 'gift' of a sum of money as a gesture of thanks upon completion of the house move.
14. Over the course of 14, 16 and 17 April 2021 the claimant assisted Mr Coutts with Mr Coutts' partner's house move between North Queensferry and
10 Cowdenbeath. That also involved a trip between Portobello and Cowdenbeath on 14 April. All of these trips took place in Mr Coutts' works van that he uses in the respondent business. As this house move involved manual lifting, which by its nature risks clothes getting dirty or torn, Mr Coutts loaned the claimant a jacket bearing the '*Bay Gardens*' logo to protect his clothing.
- 15 15. All of the tasks the claimant assisted with during this time were associated with the house move, including reorganising some heavy equipment in Mr Coutts' works garage to make room for furniture storage. None of the tasks he carried out were related in any way to the respondent's business.
16. On 17 April the claimant suffered an injury to his foot when a drawer fell on it.
20 He attended at accident and emergency that same day and was advised to rest. As a result he took no further part in the house move. He also required to take two weeks' sick absence from his job at Rosyth Dockyard.
17. The relationship between the claimant and Mr Coutts deteriorated because of the claimant's accident on 17 April and ultimately Mr Coutts did not gift any
25 money from himself and his partner to the claimant, as he had initially indicated he would.

Observations on the evidence

18. Although there was obvious ill feeling between the parties the Tribunal found that both witnesses gave their evidence truthfully.

Claimant's submissions

19. In the claimant's submission he was entitled to be paid for his time because Mr Coutts had told him he would be paid. Despite Mr Coutts' evidence, he believed that Mr Coutts *had* been paid for his labours in carrying out the house
5 move and he was entitled to be paid too.

Respondent's submissions

20. Mr Coutts submitted that the claimant's claim was a '*farce*'. The claimant had merely agreed to help him out as a family member in carrying out a task that was not associated with his business and that he was not being paid for.
10 There was no agreement about pay and therefore no contractual basis upon which he could insist on payment.

Decision

21. It was abundantly clear to the Tribunal that the claimant was neither the respondent's employee nor a worker engaged in a contract with the
15 respondent during the short period when he assisted Mr Coutts with his partner's house removal.
22. The work carried out was not in the nature of the respondent's business at all. That the removal was carried out using the respondent's vehicle was simply a matter of practical common sense as it was available and saved the
20 expense of hiring another. It was clear to the Tribunal that Mr Coutts loaned the claimant a 'Bay Gardens' jacket in order to protect his clothing and for no other reason. He was evidently not working *for* Bay Gardens when he wore it.
23. The Tribunal was satisfied that this was an arrangement between the claimant
25 and Mr Coutts as individuals. At its highest Mr Coutts indicated to the claimant that he would receive a gift of money from him and his partner as a gesture of thanks for helping out, but that was as far as it went.
24. In all the circumstances the Tribunal concludes that there was no agreement between the claimant and the respondent at all, far less an agreement that

the claimant would provide his labour to the respondent in return for remuneration.

5 25. The Tribunal is therefore bound to find that the claimant was neither an employee nor a worker engaged in a contract with the respondent and that he is not entitled to any payment from the respondent for his labours in helping Mr Coutts with his partner's house move.

10 26. The claimant's claim is therefore dismissed.

15 Employment Judge: Robert King
Date of Judgment: 03 December 2021
Entered in register: 09 December 2021
and copied to parties