



# EMPLOYMENT TRIBUNALS

**Claimant: Ms B Parcell**

**Respondent: Mr Roderick Bloor**

**Heard at Leeds by CVP**

**On: 8 February 2024**

**Before**

**Employment Judge Davies**

## **Appearances**

**For the Claimant:**

**In person**

**For the Respondent:**

**Did not attend**

## **JUDGMENT**

1. Mr Roderick Bloor is substituted as the correct Respondent to this claim.
2. The Claimant was an employee of the Respondent.
3. The Claimant's complaints of unauthorised deduction from wages (hours worked and accrued holiday pay) and breach of contract by failing to reimburse the Claimant for expenses, are well-founded and succeed.
4. The Respondent shall pay the Claimant:

4.1 Wages:	<b>£306</b>
4.2 Holiday pay:	<b>£144</b>
4.3 Expenses:	<b>£52</b>

## **REASONS**

### **Introduction**

1. The Claimant is Ms Bianca Parcell. She represented herself today. The Respondent did not attend. The Tribunal tried to contact it using the phone number provided in the ET3 response but nobody answered. I decided to go ahead with the hearing. I took into account the written statement and evidence provided by Mr Bloor as ordered by EJ Brain.
2. The Claimant originally brought her claim against Mr Roderick Bloor. Mr Bloor presented an ET3 response form stating that the correct Respondent was Waterdale Business Group Ltd. The Claimant agreed with the Tribunal's

proposal that that company should be substituted as the correct Respondent to her claim. However, at today's hearing, she told me that she had never heard of Waterdale Business Group Ltd until Mr Bloor said that it was the correct Respondent to the claim. I found, as explained below, that the Claimant did not have any contract with Waterdale Business Group Ltd. Her contract was with Mr Bloor personally. I decided that Mr Bloor should be substituted again as the correct Respondent to the claim. Mr Bloor has conducted these proceedings throughout. The response was provided by him and he provided a statement and evidence. His case was simply that the Claimant was self-employed.

3. I considered all of the documents on the Tribunal file, including those provided by Mr Bloor as ordered by EJ Brain. I heard oral evidence from the Claimant.

## **Issues**

4. The issues for me to decide at this hearing were.
  - 13.1 Was the Claimant an employee as defined in the Employment Rights Act 1996?
  - 13.2 If not, was she a worker as defined in that Act?
  - 13.3 If the Claimant was a worker or an employee, was she owed £306 in unpaid wages and £144 for accrued but untaken holiday?
  - 13.4 If the Claimant was an employee, was she contractually entitled to be reimbursed for expenses incurred in buying ingredients and was her employer in breach of contract in failing to pay her £52 for such expenses?

## **Findings of fact**

5. I accepted the Claimant's clear and detailed evidence, which was supported by the documents and by what happened in practice.
6. In April 2023 the Claimant was employed by the Co-op. She had previously run her own children's play centre business, as part of which she did her own baking and cooking. She asked her friend, who worked at The Harewood restaurant in Doncaster, whether there were any jobs going. Her friend told her to come in and meet Mr Bloor, the owner, and she did so a couple of days later.
7. The Claimant was expecting to be talking about bar work, but Mr Bloor told her that he wanted her to be a baker. Her friend had told him about the Claimant's expertise and passion for baking. He wanted the restaurant to have baked goods throughout the week, to develop as more of a coffee lounge during the daytime, with afternoon teas and special events. Mr Bloor explicitly asked the Claimant whether she wanted to be self-employed. She told him that she did not, because she had been self-employed before and did not want to do the paperwork. He said, "fine, we'll put you on the books." He told her that she would get her standard holiday. The Claimant thought that he had said she would be entitled to 5.1 weeks' per year. No doubt he actually referred to the standard 5.6 weeks' entitlement under the Working Time Regulations. The Claimant's partial recollection of this part of the conversation reinforced my view that Mr Bloor must have said something about standard holiday entitlement.

8. Mr Bloor told the Claimant that he wanted her to work 3 or 4 days per week, including weekends. They discussed hours. She said that she needed a minimum of 20 hours, and he agreed. He asked if she would be able to work more hours when they were busy and she agreed. He wanted her to be involved in training the bar staff as well, because she had experience of bar work. They agreed that she would start work at 9.15am on weekdays, to allow for the school drop off, but between 5am and 6am on weekends. They discussed pay. Mr Bloor asked the Claimant what she wanted to be paid. She said that she would be looking for at least £11.50 per hour, which is what she was currently on. He said he would pay her £12, "because that's what I pay my other staff."
9. Mr Bloor did not make any mention of Waterdale Business Group Ltd. He did not say that the Claimant would be employed by any company. He referred to "we" and "I" – e.g. "that's what I pay my other staff."
10. The Claimant agreed that she would give notice to the Co-op straight away. The Claimant was able to start work for the Respondent the following week, because she only worked part-time at the Co-op. Initially, she went in and helped organise the bar area and train up the bar staff because Mr Bloor wanted a proper launch of the baked goods a week or two later, and the Claimant told him that she needed to be doing some work in the meantime.
11. The following week, the Claimant bought some necessary equipment – baking tins and so on and planned the menus. Mr Bloor told her to buy what she needed and he would reimburse her. She used her own stand mixer. They discussed the menus together but Mr Bloor told the Claimant to choose what she wanted to cook because he was not a great cake eater himself. She was given access to The Harewood Facebook page and she promoted the baked goods on it as the new in-house baker.
12. The Claimant started baking properly after two weeks. She did other roles too, because the business was short-staffed. Members of staff filled in a time sheet, showing their start and finish times and breaks. Mr Bloor asked the Claimant to note what activity she was doing too, for example baking or bar work, so she wrote her hours at the side of the sheet.
13. The Claimant wore chef's whites provided by the business. When she was in the bar she wore all black, with a grey apron provided by the business.
14. The Claimant asked Mr Bloor for a contract and payslips. He said that he would provide one, but he never did.
15. The Claimant did not invoice the business. She was paid for her hours in full weekly. That was usually partly in cash and partly into her bank. Payments into her bank were labelled by the business as "salary" and were referenced "The Harewood."
16. When the Claimant initially started baking, Mr Bloor bought the ingredients. However, he bought expensive items that were not always the most useful, so she suggested to him that she buy the ingredients and he reimburse her. Mr Bloor agreed. He told her he would pay her if he was in, or she should put the

receipt in the till and reimburse herself from petty cash. That is what then happened.

17. The Claimant's evidence was that there was always a drama and that she was being sent text messages at all hours of the day and night. A false allegation was then made about her and she messaged Mr Bloor's partner to say that she had had enough and was fed up of being constantly messaged. She had previously agreed to go in that evening to do a deep clean in the kitchen with some other staff. She agreed that she would still do so. Having done a full day's work already, she went in at 8pm and worked until 3am doing the deep clean. She was due in again at 7am the next day, but was again disturbed in the night by text messages. She messaged Mr Bloor and his partner to say that she had had enough and would not be returning. She asked for her outstanding wages and expenses but Mr Bloor refused to pay them. She collected her mixer from the premises, but left all the other equipment, because that belonged to the business.
18. The Claimant explained that she had worked 25.5 hours in the last week for which she was not paid. She had calculated, based on her average weekly hours, that she was entitled to 12 hours' holiday pay. She provided receipts for the £52 of ingredients she had bought but not been paid for.
19. I asked the Claimant about Mr Bloor's suggestion that she was self-employed and had her own business called Bronte's treats. She said that she started this on a very small scale after she left The Harewood (and had soon stopped it again). She provided evidence of that, and her bank statements showed that she was not receiving other payments while working for the Co-op or The Harewood. I accepted her evidence. I also asked the Claimant about Mr Bloor's suggestion that she was meant to do the baking from home but had to use the kitchens at the Harewood because she failed to provide hygiene certificates. She said that her home kitchen is tiny and that she could not possibly have done The Harewood's baking there.
20. I noted that Mr Bloor had provided evidence from the accountant of Waterdale Business Group Ltd that Mr Bloor had not asked him to put the Claimant on the books. I also noted that Mr Bloor had provided contracts from four other people, which were contracts of employment with Waterdale Business Group Ltd. This evidence seemed to me to be of limited value. There is no dispute that the Claimant did not have a written contract. The issue is who her contract was with and what it said. The fact that contracts were entered into with four people does not help to establish what the Claimant's position was.

## **Legal principles**

21. Section 230 of the Employment Rights Act 1996 provides, so far as material, as follows:

### **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.

...

(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.

22. It is well-established that there is no single test for determining whether an individual is an employee within the meaning of s 230(1). Each case depends on its own facts. There is, however, said to be an “irreducible minimum”, without which there can be no contract of employment. That minimum comprises:

*Mutuality of obligation* - an obligation on the employer to provide work and on the employee to accept and perform the work offered;

*Control* – put simply, that ultimate authority over the purported employee in the performance of his or her work must rest with the employer; and

*Personal service* - the employee must be obliged to perform the work personally, subject to a limited power of delegation.

See: *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433 QBD; *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612 CA; *Carmichael v National Power plc* [2000] IRLR 43.

23. The Tribunal must find as a matter of fact whether there was a contract between the parties and, if so, what its terms were

## Application of the law to the facts

24. I start with the question of who the Claimant’s contract was with. That issue clearly arises on the evidence before me. I have no hesitation in finding that her contract was with Mr Bloor. I have accepted the Claimant’s evidence that she had never heard of Waterdale Business Group Ltd before Mr Bloor mentioned it

in these proceedings. Nothing in the evidence provided by Mr Bloor indicates otherwise. Mr Bloor did not provide the Claimant with a written contract of any kind and he did not say in writing that her contract was with Waterdale Business Group Ltd. In his discussions with the Claimant when they agreed about her work, pay and so on, Mr Bloor referred to “we” and “I”. In those circumstances, the person with whom the Claimant entered a contract was clearly Mr Bloor. She did not enter a contract with a legal entity of which she had never heard, which was never mentioned to her and which was never referred to in any of her dealings with Mr Bloor.

25. The next question is whether the Claimant was an employee. Again, she clearly was. As explained above, I accept her evidence that she expressly agreed with Mr Bloor that she did not want to be self-employed and would go on the books. That was the express, verbal contract between them. Furthermore, everything that followed was consistent with that: the Respondent agreed to provide the Claimant with a minimum of 20 hours’ work per week and did so; the Claimant was obliged to work those hours and did so; the Claimant was paid “salary” based on an agreed hourly rate for the hours she worked; she did not provide invoices, she kept a record of her hours in the same way as the other staff; the Claimant worked at the premises, under the direction of Mr Bloor and as part of The Harewood operation; she performed the work herself and was clearly expected to do so.
26. I accepted the Claimant’s evidence about being owed £306 wages and £144 holiday pay. Her complaint of unauthorised deduction from wages therefore succeeds.
27. The final question is whether the Claimant was contractually entitled to be reimbursed for expenses when she bought ingredients. I find that she was. She expressly agreed verbally with Mr Bloor that she would do the shopping and that he would reimburse her either personally or through the petty cash, and that is what happened. I find that that was a term of her contract.
28. I accepted the Claimant’s evidence about being owed £52 for ingredients she had bought but not been reimbursed for. Mr Bloor was in breach of contract in failing to reimburse her for those sums.

**Employment Judge Davies  
8 February 2024**



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23. The Tribunal must find as a matter of fact whether there was a contract between the parties and, if so, what its terms were

## Application of the law to the facts

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**Employment Judge Davies  
8 February 2024**