EMPLOYMENT TRIBUNALS

Heard at: Ashford (by video) **On:** 18 September 2024

Claimant: Mrs Emma White

Respondent: Skyes Cleaning Group Limited

Before: Employment Judge E Fowell

Representation:

Claimant In person

Respondent Emilia Ashcroft, Legal Advisor

JUDGMENT

1. The claimant's status was that of a worker.

2. As such, she is entitled to claim:

   (a) unlawful deduction from wages;

   (b) payment in respect of annual leave under the Working Time Regulations 1998; and

   (c) compensation in respect of a failure to provide her with a written statement of particulars of employment.

3. All of these claims succeeds and the claimant is awarded £637 in total, comprising respectively;

   (a) £45;

   (b) £112;

   (c) £480

4. Applying the guidance in **Walters t/a Rosewood v Barik UKEAT/0053/16/BA**, the award for claims (a) and (b) above are gross amounts which the respondent can satisfy by payment to the claimant of the net amount due and payment to

HMRC of any tax and national insurance which falls to be deducted at source. There are no deductions due in respect of claim (c).

5. NB The total of £637 is a revision from the sum stated at the hearing of £397, which inadvertently only took account of one week's pay for the lack of employment particulars, so was understated by £240. It is corrected under Rule 69 (the 'slip rule').

REASONS

Introduction

1. These written reasons are provided at the request of the respondent following oral reasons given earlier today.

2. Mrs White worked for the company for a little over a month, ostensibly on a self-employed basis, but she says that she ought in fact to be classified as a worker. Her claims are for:

   (a) unlawful deduction from wages; and

   (b) breach of the Working Time Regulations 1998 in relation to outstanding holiday pay; and

   (c) failure to provide a statement of employment particulars.

Procedure and evidence

3. This hearing was listed for a day, since it involved an issue of employment status, but the morning was spent in trying to locate and obtain the documents which each side had sent to the tribunal. Mrs White was able to provide a further copy of her evidence by email, but the respondent did not have a working scanner. After some delay, the hard copies of the respondent's evidence were located at Croydon and scanned to me, sitting remotely.

4. I then heard evidence from Mrs White, and on behalf of the company from Ms Sykes. Having considered this evidence and the submissions on each side, I make the following findings of fact.

Findings of Fact

5. Mrs White started working for Sykes Cleaning Group Limited on 4 October 2023. As the name suggests it is a cleaning company, so it sends cleaners to various households and businesses. Mrs White's role initial was as Compliance Officer. According to the staff handbook, Compliance Officers visit each site three to four times a year to check the standard of cleaning and that the client is happy with the service provided. They then provide a report on their findings.

6. There was an agreed hourly rate of £15, with expenses paid and mileage at 45p a mile. Mrs White would contact clients by phone or email to arrange a visit, then complete an audit form and forward it to Ms Stephanie Hassko for approval. The phone was a company mobile, although as it was a relatively new business Mrs Sykes had purchased it herself. She was also given a tablet to record her findings and liaise with the customers.

7. The handbook refers to a system ('Blip'), which involved members of staff scanning a QR code on arrival at work. As Mrs White was not office-based, she was not required to comply with this.

8. She signed a self-employed contract on her first day which stated:

> "Sykes Cleaning Group Limited take you on as a casual worker. This is not an employed role and as such we will not deal with your tax affairs. …
>
> All wages are paid on 15th of the month, a month in arrears. You will receive payment based on your clock ins on our system.
>
> If you wish to stop working with Sykes Cleaning Group Limited you will need to give a minimum of two weeks notice.
>
> A minimum of four weeks notice must be given for holiday leave. Before this can be booked please get confirmation from hr@skycleaning.com
>
> If you are sick you agree to give us as much notice as possible to enable us to provide emergency cover."

9. There was also a short non-disclosure agreement to protect the confidentiality of clients and an equally short keyholder agreement. That was the extent of the contract.

10. This role as Compliance Officer was not her only job. Mrs White also worked as a self-employed housekeeper, with her own clients, so she explained at the outset that she could only work on Wednesdays and Fridays. When she started she also had a couple of those days booked off.

11. She was to invoice for the hours worked, including her travelling time. Her area was in Kent, with about 9 clients to visit.

12. Her main dealings were with Mrs Sykes. Having given her the tablet and phone, Mrs Sykes told her to be contactable during working hours. In fact, she was often contacted on other days of the week or out of hours.

13. Shortly afterwards, the job of Accounts Manager became available after a couple of staff resigned. (This role is also described in the staff handbook). Mrs White applied because her background was in accounts. Mrs Sykes offered her the job immediately, so she went into the office on 25 October, where she was given a laptop to replace the tablet she had been using.

14. The new role mainly involved raising invoices, allocating payments against those invoices and chasing clients for payments, but mainly, in her case, raising invoices. It was agreed verbally with Mrs Sykes that she would have to be in the office on Wednesday and Friday - between 8.30-4.30 and would be paid £15 per hour, as before. Since she had not been required to use the Blip system previously, she was not expected to do so from then on although she was given a key card for access to the building.

15. So, Mrs White started working from the office in this new role from about 25 October, working alongside the other Finance Manager, Maureen, who worked on the other days of the week. They had to cover each other's work to a degree, although Maureen also had other responsibilities. The two met up in the office on 8 November 2023 so that Mrs White could learn more about the Finance system and they had a shared email address – accounts@sykescleaning.com

16. At about this time, working relations deteriorated between Mrs White and Mrs Sykes. Mrs White was expected to answer her phone on all working days of the week, not just Wednesday and Friday, and it was tracked so they could check if she answered. Mrs White was also off on Friday 10 November, having given this as a date she could not work at the outset. She had a text from Mrs Sykes on the Wednesday before this at about 2350 to say

> "Can you ring me as I'm not happy with your not coming in on Friday"

17. Mrs White was not happy with this sort of scrutiny either and responded the next day:

> "I mentioned this to yourself and Stephanie [Hassko, the Office Manager] so I will not call Ellie, I am self-employed and I'm taking a day off as I am going away with my partner. I have not just decided to take a random day off because I can't be bothered to come into the office!

18. Mrs Sykes told me she had no recollection of being told this but since it was recorded at the time I accept that Mrs White must have made someone aware of this at an earlier stage.

19. Mrs White was so put out by this and previous interactions that she decided to resign, and did so by informing Ms Hassko on 9 November. That prompted a series of angry exchanges over the return of the laptop. Mrs White said she would return it the following week when she was nearby. In the end it was taken round to another employee's address by Mrs White's son, something Mrs Sykes complained of as a breach of security.

20. Mrs White submitted her final invoice for £382.50. This time, it was not paid in full. Various deductions were made, for which there was no obvious justification:

    (a) £120 for the returned computer and phone to be checked for viruses;

(b) £15 admin fee for the recruitment officer having to deal with her unreasonable behaviour;

(c) £15 admin for the Operations Manager for the same reason;

(d) £40 admin for the Directors fee for having to deal with the matter of reporting the theft of their equipment to the police.

21. Most of which have now been paid, leaving a balance of just £45. A counter invoice was raised against Mrs White. For the 45 pounds was that it was 3 hours of

> 'unnecessary work carried out on accounts that didn't need to be looked into'.

22. There has in fact been some confusion over the respondents' reason for making this last deduction. The Grounds of Resistance states, which were professionally drafted, state at paragraph 14 that Mrs White was unable to provide evidence for the three hours in question and thus it was deducted from her final invoice. However the wording in the company's own invoice makes it clear that the work was in fact done. At this hearing it was suggested that the work was done badly and that was the reason for the deduction.

Applicable Law

Status

Workers

23. The definition of a worker is the same in the Working Time Regulations and in the Employment Rights Act 1996. It is set out in Regulation 2 and in the interpretation section of the Act, as follows:

> "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 or any profession or business undertaking carried on by the individual."

24. The focus here is on the second limb of the test – often called limb (b) – i.e. on whether Mrs White was contracted to do work personally, and if so was the respondent her client or customer?

25. The question of worker status has been the subject of many recent decisions. In the case of **Byrne Brothers Ltd v Baird & others** [2002] IRLR 96 (EAT) Mr

Recorder Underhill (as he then was) gave the following guidance on the position of such workers:

> "The intention behind the regulation is plainly to create an intermediate class of protected worker who, on the one hand, is not an employee but, on the other hand cannot in some narrower sense be regarded as carrying on a business. The policy behind the inclusion of limb (b) can only have been to extend the protection accorded by the Working Time Regulations to workers who are in the same need of that type of protection as employees in the strict sense – workers, that is, while viewed as liable, whatever their employment status, to be required to work excessive hours. The reason why employees were thought to need protection is that they are in a subordinate and dependent position vis-à-vis their employees. The purpose of regulation 2(1)(b) is to extend protection to workers who are, substantively and economically, in the same position. Thus the essence of the intended distinction must be between, on the one hand, workers whose degree of dependence is essentially the same as that of employees and, on the other, contractors who have a sufficiently arm's-length and independent position to be treated as being able to look after themselves in the relevant respects.

Conclusions

26. I will start with the contract itself, which is relatively brief, less than a page long. Although it uses the term self-employed at the top, it actually describes Mrs White as a casual worker. A casual worker is someone who is not under an obligation to accept work when offered but if they do they will ordinarily be regarded as a worker and so be entitled to the National Minimum Wage, daily risk breaks and the other provisions of the Working Time Regulations. So the contract itself provides little support to the respondent's case.

27. It is clear from that document and from the way the contract was operated that she was expecting to provide her work personally. It has not been suggested that she could provide a substitute, i.e. to send someone along to act as a compliance officer or accounts manager, so the first part of the test is satisfied. This was a contract to provide work personally.

28. The only real question therefore is whether she was doing that for the company because they were her client or customer and she was carrying on a business or profession. It is certainly true that she had other customers in her own cleaning business but that makes very little difference. It was an entirely different type of work. And although in that line of business she may well have had many customers and been working on a self-employed basis, if does not follow that on Wednesdays and Fridays the company became one of them. On those days there was nothing to distinguish her from anyone else working for the company. Consequently, the test of worker status is met.

29. Looking at the relationship more generally, it is exactly the type of dependent relationship described in the passage above. It is also clear that she was well

integrated into the company and carrying out roles which were an important part of the company's operations. She had the trappings of employment, such as an email address, a swipe card, a phone a tablet and then a laptop. Her roles were sufficiently central to be described in the staff handbook to make them clear to other members of staff, so these were permanent positions. As accounts manager she then had fixed hours, working in the office, where there was a high degree of control and supervision. Whether she was expected to answer the phone on her non-working days or not, during her working hours she was expected to be available and her use of the phone and her whereabouts were monitored. (One justification for deducting the £45 was that these records had been scoured and they could not find what she had been doing.) None of this si what one would expect to see in the case of a freelancer.

30. There is obviously the fact that she submitted invoices and at times regarded herself as self-employed. That is the arrangement which has been put to her by the company. But that only takes things so far. Clearly, as someone in a dependent or subordinate relationship with the company, she had little choice but to go along with these payment arrangements. It may also be that as a compliance officer she needed to let the company know what hours she had worked. When she became accounts manager, working regular hours in the office, there was no need for her to tell the company when or how long she had worked. It became more of a fiction, a device to allow the respondent to maintain that this was a self-employed relationship.

31. The fact of providing invoices and being responsible to HMRC for her own tax and national insurance is always regarded as an important factor in considering employment status, and but for the invoices it would be a nice question whether Mrs White should in fact be regarded as an employee, but that is not necessary for me to resolve today. It is sufficient to conclude, as I do, that she was a worker.

Unpaid wages

32. The £45 was an invoiced sum, but that is just the mechanism for payment. Having decided that she was a worker, the amount in question has to be regarded as wages. It was payment for hours worked.

33. The only basis for making deductions from wages are set out in sections 13(1) and 15(1) of the Employment Rights Act 1996. Section 15 relates to statutory provisions. Section 13 allows deductions or payments made under a "relevant provision" of the worker's contract (sub-section(1)(a)) and deductions or payments to which the worker has previously signified her agreement in writing (sub-section(1)(b)). None of these exceptions applies here.

Statement of employment particulars

34. Under the law as it stood before 6 April 2020, a section 1 statement had to be provided to employees not later than two months after their employment started. However, with effect from 6 April 2020, the right to a written statement is now a 'day one' right. Reg 3 of the 2018 Amendment Regulations amended s.1(2) to provide that the majority of the written particulars required must be given 'not later than the beginning of the employment'. That principal statement must include:

- the names of employer and employee
- the date the employee's employment began under the contract and the date on which the employee's period of continuous employment began
- the scale or rate of remuneration and the intervals at which it is paid
- hours of work
- holiday entitlement and holiday pay
- the job title or a brief job description, and
- details of the place or places of work.

35. Certainly not all of this has been done. There was, for example, no detail of the holiday entitlement. Obviously from the respondent's point of view there was no such entitlement but it follows from my conclusion above that there was and so the statement was defective. A minimum of two weeks' pay is then awarded unless there are exceptional circumstances, which do not apply here and so I award those two weeks.

36. On the basis that a week's pay involved two weeks work of 8 hours per day, i.e.16 hours at £15 per hour, a week's pay amount to £240. The sum awarded is therefore £480.

Holiday Pay

37. It also follows that Mrs White is entitled to her accrued holiday at the statutory rate of 5.6 weeks per year. She has claimed for one month's loss of holiday.

38. 5.6 weeks per year, at £240 per week, would involve a yearly amount of £1,344. One month (1/12 of that total) is £112.

39. The total amount therefore is £637. (That is a revision from the sum stated at the hearing of £397, which inadvertently only took account of one week's pay for the lack of employment particulars.)

Conclusions

40. For all of the above reasons the claim is upheld/dismissed.

Compensation

Employment Judge Fowell

Date 18 September 2024

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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