



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000874/2024**

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**Held in Glasgow via Cloud Video Platform (CVP) on 2 September 2024**

**Employment Judge Campbell**

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**Mr H Din**

**Claimant  
In Person**

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**TGK Logistics Scotland Ltd**

**Respondent  
Not present and  
Not represented**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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1. The claimant was a worker within the definition of section 230(3)(b) of the Employment Rights Act 1996;
  2. The claimant was subject to an unlawful deduction from his wages, contrary to section 13 of that Act;
  3. The respondent is therefore ordered to pay the claimant the sum of £543.60
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- in compensation for the sum unlawfully deducted.

### **REASONS**

#### **Introduction**

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1. This claim arose out of the claimant's engagement by the respondent to act as a delivery driver. The respondent did not accept that the claimant was an employee or other type of 'worker' as defined in section 230 of the Employment Rights Act 1996, and insisted that he was a fully independent contractor.

2. The claimant's engagement came to an end and he alleged that he did not receive payment for the final shifts that he worked.
3. The respondent did not defend the claim despite a copy of the claim form being sent to its operating address, and it was not represented at this hearing.
- 5 4. As the question of the claimant's eligibility to pursue his claim had to be determined, evidence was required of that as well as in relation to the amount the claimant was seeking.
5. The claimant provided a small number of documents before the hearing, comprising mainly of rotas for the days when he said he had worked but not  
10 been paid, and an invoice for the week of 14 to 20 April 2024, the last dates for which he was paid, showing details of his shift duration, the payment he received and certain deductions made by the respondent.
6. Following the hearing the claimant submitted further documents which were considered in reaching a decision in his claim. Those included policy  
15 documents issued by the respondent to its drivers and an extract from his personal terms of engagement. He also provided copy text messages in which he asked the respondent for payment in relation to the disputed shifts.
7. At the hearing, which took place by video, the claimant gave evidence under oath. He was found to be credible, open and reliable. He provided some  
20 answers to questions, and at least one document referred to in more detail below, which potentially could have contradicted his claim of worker status had there not been other evidence in favour of that status.
8. As it became clear during the hearing that the claimant possessed documents which may have been relevant to his claim, the hearing was adjourned after  
25 hearing his evidence so that he could submit those documents to the tribunal. A decision was then reached in his claim.

### **Legal issues**

The issues for the tribunal to decide were as follows:

1. Was the claimant a worker within the scope of section 230(3)(b) of the Employment Rights Act 1996 when working for the respondent?
2. If so, was he paid less for working than he was contractually due, or not paid at all for working?
- 5 3. If so, on what date was the deduction made, and in what amount?

### Applicable law

1. Employment tribunals are given powers to decide certain claims. Whether a particular claim can be made by an individual depends on their status. In some cases they must be an 'employee' and in other cases they must be a 'worker'.  
10 The two terms are defined in various pieces of legislation, particularly the Employment Rights Act 1996 (the 'Act').
2. Section 230 of the Act states as follows:

#### **230 Employees, workers etc.**

- 15 (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.*
- 20 (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*
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*business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.*

(3) *In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.*

(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.*

3. By virtue of section 13 of the Act a worker is entitled not to have unauthorised deductions made from their wages. Therefore, subject to specific exceptions provided for in that part of the Act, there will have been an unauthorised deduction if the worker is paid less than they have earned, depending on how their earnings are calculated, or not paid at all for their work. The date of the deduction is deemed to be either the day when less is paid to them than they have earned, or when they would normally have been paid but were not. A complaint can be made about a series of deductions if the situation is repeated.

## **Findings of Fact**

1. The respondent is a limited company which has a contract with the 'amazon' online business to deliver its orders to customers' homes, primarily in South Lanarkshire. The claimant was engaged by the respondent between 28 November 2023 and 24 April 2024 as a delivery driver.

2. When working for the respondent, the claimant would report for each shift to its base at Eurocentral in Motherwell, and be assigned a route to cover for that shift. Sometimes routes would be allocated slightly in advance, and sent to the drivers by WhatsApp. The claimant provided copies of such rotas. The claimant and other drivers would each be allocated a company van with

'amazon' branding to use for their deliveries. They would load the van themselves with the packages allocated to their route. When making the deliveries they would follow an app on a company device which told them the sequence of addresses to deliver to in order.

5 3. The claimant was given a set of policies by the respondent which were to apply to his engagement. They were accessed online via an app or portal and the claimant was not given paper copies, or an electronic copy which he could access offline. When his engagement ended his access to the policies ceased.

10 4. He was issued with an agreement to cover his personal terms of engagement. Those stated, among other things, that he would be paid weekly.

5. In relation to the claimant's status with the respondent, the agreement said as follows:

15 *'Both parties agree and intend that if, and when, the Supplier [being the claimant] agrees to provide services to the Company, the Supplier is engaged as an independent business in the Supplier's own right under a contract for services and not a contract of employment or any other kind of contract.*

*The Company is under no obligation to, and provides no guarantee that it will, offer or provide the Supplier with any works whatsoever.*

20 *The Supplier is under no obligation to accept any offer of works which may be made available by the Company or make their services available to the Company at any time. The Supplier is free to decline to provide any services at any time for any reason.'*

25 6. In reality, the claimant was offered a steady and predictable pattern of four shifts per week. A shift lasts nine hours. He was allocated shifts and start times. He was directed as to how to perform the deliveries, including the route and order of deliveries he should follow.

7. The claimant was regularly offered shifts and discouraged from declining them. If drivers did so they would be offered fewer shifts after that. The

claimant had no right to provide a substitute to carry out his work. If he could not do it, the respondent would find another driver.

8. The daily rate for a nine-hour shift was £117.00. Drivers had the option to charge VAT on their earnings, which the claimant did. He was therefore paid £140.40 per shift, and £561.50 for a typical four-day working week. The respondent deducted a weekly administration fee of £15.00 plus VAT from each driver's payment. Therefore the claimant would receive in his hand £543.60 for four days of work.
9. The claimant worked nine-hour shifts on 21, 22, 23 and 24 April 2024. On the last of those days he had a disagreement with a manager over whether he should make a delivery to an address in the Kilmarnock area at the end of his shift, when he was covering a route around East Kilbride. Making the Kilmarnock delivery would have involved a round trip of around one hour. The claimant raised that he would go past the end of his shift by making the delivery but the manager insisted. The claimant declined to make the delivery. On returning to the depot he was told by two managers, a Mr Steedman and a Mr Bell, not to come back. He took this to mean that he would not be offered any more work.
10. The claimant was paid weekly. He would normally have been paid for shifts in the week commencing 21 April on or around 8 May 2024, but he was not paid then, or subsequently.

## Discussion and decision

### *Worker status*

1. The first question to determine is whether the claimant is a worker within section 230(3)(b) of the Act. Only workers have the right to make a claim of unlawful deduction from wages under section 13, and part II generally, of the Act.
2. There are three essential elements to worker status:
  - a. A contract between the individual and the suggested employer;

- b. That contract requires personal service by the individual; and
  - c. The suggested employer is not a customer or a client of the individual.
3. The claimant satisfied the first of those requirements by a combination of his oral evidence and the documents he provided. There was clearly a binding agreement between the parties, largely in written form as drafted by the respondent, covering the key aspects of their arrangement with each other. Both parties intended to be bound by those terms, and in practice obeyed them. There was mutuality of obligation.
4. Similarly, the contract required that the claimant provide his services personally to the respondent. No right of substitution was written into the agreement and the claimant was not allowed to provide one in practice. If he could not work a particular shift it would be allocated to another of the respondent's workers by their choice and not his. Personal service was a key part of the contract. He and other drivers were encouraged to make themselves available for shifts despite there being a written term stating that they were not obliged to accept the offer of work. If they missed too many shifts they would be offered less work, which was to their detriment.
5. Regarding the third element, the respondent was not a customer or client of the claimant. The claimant was not in any way organised as a business. He was simply an individual who reported for work. The only customers or clients in the situation were the customers of amazon who the claimant delivered packages to. Customers or clients do not, as a rule, provide vehicles or equipment to those providing a service to them.
6. It was noted that the agreement between the parties explicitly stated that it was not a contract of employment or '*any other kind of contract.*' The evidence showed that the second of those statements was not correct in practice.
7. The tribunal is not bound by written terms between the parties when considering whether a contract was in place, and whether if so it established worker status. As emphasised in ***Autoclenz Ltd v Belcher and others [2011] IRLR 820 (SC)***, revisited as recently as 2021 in ***Uber BV and others v Aslam***

*and others [2021] UKSC 5*, a tribunal should ascertain the true nature of the arrangement by considering all relevant evidence, including but not restricted to anything in writing between the parties. The court went further to say that written terms would not decide the issue if they were inconsistent with what the parties genuinely intended.

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8. Another point given emphasis in *Uber* was that employment legislation often has the purpose of protecting individuals who are in a vulnerable position compared to the party they are contracting with. It is the 'employer' who generally writes the contract and the individual normally has little scope to change its terms. Legislation should be interpreted to give as much protection to the individual as is reasonably possible, and contractual terms which undermine that should be viewed with caution.

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9. Finally in *Uber*, the court spoke of the issues of subordination and dependence in the working relationship. Those will be greater where the employer exercises a higher degree of control and direction towards the individual. In those situations there is a stronger case for categorising the individual as a worker. In the current case, substantially all control was with the respondent, down to the choice of route allocated to a driver and the precise order in which they carried out their deliveries. The main area of discretion for drivers was when they made themselves available for work, but in reality they felt bound to be on hand when the respondent required, so that they did not lose out on future work.

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10. Considering all of the available evidence in light of the prevailing law, it was determined that the claimant was a worker under section 230(3)(b) of the Act.

### 25 **Deduction from wages claim**

11. The next question to determine is whether the claimant had a deduction made from his wages, noting that a deduction in the statutory sense can include no payment at all if a payment would normally be made.

12. The claimant was paid weekly, normally a week in arrears. He was paid on Wednesdays. He was paid on Wednesday 1 May for shifts worked up to 20

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5 April 2024. It is reasonable to assume that for his shifts between 21 and 24 April inclusive, he would have been paid on Wednesday 8 May 2024. He was not paid then, or on any later date. There was therefore a deduction from his wages on that day. He contacted ACAS to begin early conciliation on 20 May 2024 and presented his claim to the tribunal on 19 June 2024. His claim was within the relevant statutory time limits.

10 13. The claimant provided evidence from the respondent that he had been rostered to work on 21 to 24 April, and his evidence was that he did work those shifts. There is no evidence to the contrary and it is accepted that he carried out the work as he claimed. There was therefore an unlawful deduction from his wages by the respondent when it did not pay him for that work.

15 14. In terms of quantification of the deduction, the claimant was paid £117.00 per nine-hour shift as evidenced by a previous invoice he produced. He opted to charge VAT on that, which he separately arranged to pay, taking the figure to £140.40. Four days at that rate equates to £561.60. From that would have been deducted the weekly administration fee of £18, including VAT, leaving a net payment of £543.60. This is the amount he should have received and therefore the tribunal awards him that sum. He will have to account for the VAT aspect payable to HMRC separately, as he would do had the respondent paid him the money in the usual way.

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25 **B Campbell**  

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**Employment Judge**

**10 September 2024**  

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**Date of Judgment**

30 **Date sent to parties**

**10 September 2024**  

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