



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr HD Jeffers**

**v**

**Aqeel Williams**

**Heard at:** Watford

**On:** 27 November 2018

**Before:** Employment Judge Daniels

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Did not attend

## **JUDGMENT**

1. The claimant's application to amend the respondent's name to Aqeel Williams is granted.
2. The claimant was a worker within the meaning of s.230 Employment Rights Act 1996 for Mr Williams.
3. The claimant's claim for breach of contract/unlawful deductions from wages is well founded.

## **REMEDY**

1 The claimant is awarded the gross sum of £765 for breach of contract/unlawful deductions from wages, to be paid by Mr Williams. The claimant will account for any tax liability in respect of such payment.

## REASONS

1. The claimant agreed with Aqeel Williams to perform a painting job at a rate of £90 per eight hour day starting work on 25 January 2018. The claimant worked two days and on 26 January 2018 was paid £180. The claimant then worked an additional five days from 27 January 2018 to 2 February 2018 and was eventually paid £450 for that work on 3 February 2018. The job was not completed and the claimant was instructed to continue work. He then worked a further five and a half days from 3 February 2018 to 9 February 2018. It was confirmed that he would be paid at that time. There were then a series of exchanges of communications where the respondent agreed that their claimant would be paid half of the money up front and the remainder when the job was finished. The claimant then continued to work on 12-15 February 2018. The claimant asked the respondent on 16 February 2018 to confirm the transfer of the remaining sum of £495 into his account for the five and a half days that he had worked from 3 February 2018 to 9 February 2018 and the balance of the payment of three days. Despite repeated attempts to be paid these sums were not paid. The claimant sent a further text on 5 March 2018 chasing the £765 owed for eight and a half days' work. At no stage was the claimant informed that his engagement had been terminated whether due to poor performance or the failure to provide a UTI number. There are no communications suggesting that this issue had been raised by the respondent.
2. The claimant provided a series of bank statements and text messages supporting his description of the chronology. The bank statements show payments made from L Williams on 5 February 2018 of £450 and a payment of £180 as a credit of cash from the claimant on 29 January 2018. The claimant contends that he was engaged by Mr Williams as a sub-contractor and that he was responsible for payment of tax. He recorded his payments through the bank in order to ensure that he was able to advise HMRC of the relevant liability for taxes in due course.
3. At the start of the hearing the claimant made an application to amend his complaint to formally add Mr Aqeel Williams as the respondent replacing Expert Plasterers as the respondent. It was noted that Mr Williams was named in the original claim form. Further, the response prepared by Mr Williams stated that he was the party who had engaged the claimant as a sub-contractor in order to work for Expert Plasterers Ltd and that this was an oral agreement between Mr Williams and the claimant. In the circumstances an application to amend the claim form to change the name of the employer to Mr Aqeel Williams was accepted as it would be in the interests of justice to do so. From the outset the claimant had made clear that Mr Aqeel Williams was the owner of the company and he had worked for him. Mr Williams also accepted this when the response was provided. There was a dispute about what was due to be paid to Mr Jeffers but there was no suggestion that Mr Williams was not the employer of Mr Jeffers. I could not see any material prejudice being suffered by Mr Williams in having to deal with the complaint. Mr Williams stated that he would not have been able to attend the hearing but the date of the hearing had been notified in good time before today. In all the

circumstances it would be in the interests of justice to grant the amendment to change the name of the employer and to proceed with the hearing.

4. I conclude that the claimant was a worker within the meaning of s.230 Employment Rights Act 1996 for Mr Williams in all the circumstances.
5. The claim for eight and a half days' pay as unlawful deductions from wages is well founded in the light of the above facts.
6. In view of all the facts and circumstances of this case, Mr Williams is obliged to make a payment of £765 to the claimant (with the claimant being responsible for any tax and National Insurance in respect of such payment).
7. Mr Jeffers stated at the hearing his wish to include an additional claim for one week's pay for the work that he would have performed had the contract continued. I did not grant an application to amend the claim to include this on the basis it had not been set out in the original claim and it did not appear to have reasonable prospects of success in any event bearing in mind the end to the employment relationship. No application to amend in this form was granted and any other claims of Mr Jeffers were dismissed.

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Employment Judge Daniels

Date: .....

3 January 2019

Sent to the parties on: .....

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For the Tribunal Office