



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs P Mountford

**Respondent:** Real Care Group Limited

**Heard at:** Leeds (by Cloud Video Platform) **On:** 5 January 2022

**Before:** Employment Judge Bright

## Representation

**Claimant:** Herself

**Respondent:** Mr M Houghton (Director)

# JUDGMENT

The respondent made an unauthorised deduction from the claimant's wages.  
The claim is well-founded.

The respondent shall pay to the claimant the sum of £1,750 gross.

# REASONS

## Background

1. Mrs Mountford claims that she worked for the respondent for 14 days during July and August 2021 for which she has not received payment. She says the respondent made unauthorised deductions from her wages of £1,750 gross. Her claim was accepted by the Tribunal on 28 October 2021.
2. Mr Houghton, Director of the respondent, says the claimant was not an employee nor a worker for the respondent. He says she was paid £375 gross in exchange for data she sold to the respondent. He says that, subsequently, they agreed a 'freelance' arrangement, by which she would receive a percentage of the fee for any successful placements made by her. He says that, as no successful placements were made, no fees were owed.

## Issues

3. The issues to be decided were:
  - 3.1. Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?
  - 3.2. If so, did the respondent pay the claimant the wages properly payable to her?
  - 3.3. If not, did the respondent make unauthorised deductions from the claimant's wages?

## Evidence

4. Mrs Mountford gave oral evidence on her own behalf and adduced 8 documents in evidence.
5. Mr Houghton gave oral evidence on behalf of the respondent and adduced a signed witness statement from Ms Natalie Davies ("ND"). I explained to Mr Houghton that I would attach such weight as I thought just to that witness statement, as ND was not present at the hearing so her evidence could not be given under oath nor challenged in cross examination.

## Findings of fact

6. Where there was a dispute of fact, I have resolved it, applying the balance of probabilities to the evidence before me, and I make the following findings of fact.
7. The respondent is a recruitment business working in the health and social care sectors. Mr Houghton is the sole director. ND was employed with the job title Branch Manager, in around February 2021, having previously worked 'freelance' for the respondent. There were no other employees as at the end of June 2021.
8. Much of the evidence in this case related to conversations between ND and the claimant. Mr Houghton accepted that he was not in the office very much and agreed that he was not privy to most of those conversations. The only first-hand evidence before me relating to these conversations was therefore the claimant's evidence and ND's written witness statement.
9. It was agreed that the claimant and ND had worked together previously and that it was ND who introduced the claimant to the respondent.
10. The claimant says she initially enquired about a vacancy for a registered manager, which was being advertised by the respondent for a client company in the Barnsley region. The claimant says ND told her the position was filled but asked her if she would be interested in working alongside ND in the respondent's Barnsley office instead, recruiting in the healthcare sector. The claimant says she reminded ND that she had no recruitment background, except as a manager in a nursing home. The claimant says ND asked her what she had been paid previously, told her she would speak to Mr Houghton and be in touch. The claimant says ND spoke to her again to tell her that Mr

Houghton had agreed to pay her £125 per day for 2 days per week 8.30am to 4.30pm and she should visit the office the following day to have a chat with Mr Houghton.

11. Mr Houghton agrees that ND spoke to him about the claimant, but he says it was about the contacts the claimant had in the industry and he told ND that he would be prepared to pay £375 in total for the contact data. He says there was no suggestion of the claimant working for the respondent nor any contractual arrangement other than the purchase of the data.
12. I found Mr Houghton's evidence regarding his conversations with ND rather vague, as he was unable to recall dates or specifics. The claimant's recollection was rather more specific, including the daily rate and the working hours. Moreover, her evidence of the conversation with ND is first-hand. Mr Houghton cannot give first-hand evidence of the conversations between ND and the claimant, but only of the conversation he had with ND.
13. Mr Houghton relies on assumptions that, firstly, ND relayed her initial conversation with the claimant accurately to him, secondly that he and ND understood each other during their conversation, and thirdly that ND relayed his intentions accurately to the claimant after that conversation. The claimant's first-hand evidence, in contrast, relies purely on her impression that she and ND understood each other.
14. Mr Houghton also relies on ND's written witness statement. However, I was not inclined to attach any weight to the witness statement from ND for the following reasons. Apart from the obvious problem of ND not being present to give her evidence under oath or have it challenged in cross examination, I found Mr Houghton's explanation of how the witness statement came into being unconvincing. He explained that ND had left the business, but telephoned him before the hearing, saying she had had a visit from the claimant asking her to prepare a witness statement. Mr Houghton says she told him she declined and instead asked him if he would like her to do one for him. The claimant denies that she approached ND for a witness statement, evidence which I find more compelling given that it was not disputed that there was ongoing or recently concluded litigation in the County Court between the claimant and ND at that time. The fact of that litigation makes it unlikely in my judgment, that the claimant would have approached ND for a witness statement to support her employment tribunal claim.
15. Mr Houghton's evidence is that, when approached, he told ND he "did not really want her to provide a witness statement but she wanted to do so". His evidence was that he therefore told her to "say what happened". However, ND's witness statement is not a general narrative of the events concerning the claimant and her relations with the respondent, for example an account of the conversations had between ND and the claimant at the outset or the meetings with Mr Houghton etc. It is, in the main, a succinct summary of the contractual arrangements Mr Houghton says were reached with the claimant:

*I introduced Pauline to Real Care Group so that she could provide the contract info that she had gained working the Healthcare Sector for several years. This would be useful for She [sic] was to be paid £375 for the information and agreed to raise an invoice. This information was delivered, and I believe she was paid for this, but never sent an invoice.*

*We then discussed free-lance work (based on filling permanent job vacancies) to be paid as a % of the fee of successful placements made. Payments were to be made on invoice, but as no placements were made this made no difference.*

16. I find it surprising that ND, having been told to “say what happened”, produced such a succinct account of the contractual arguments of the respondent. In the absence of ND to confirm the veracity of her witness statement and give an account of its origin, I am not therefore prepared to attach any weight to it. For these reasons, I preferred the evidence of the claimant (set out at paragraph 10) as to the agreement reached with ND.
17. The claimant says that, after her conversation with ND, she visited the office and had an informal chat with Mr Houghton to confirm the arrangement. She says there was no mention of buying data, no talk of being freelance and no mention of invoicing. The claimant says the agreement was that she was to work alongside ND as a recruitment consultant every Tuesday and Thursday to suit ND’s work schedule. She says the agreement was that ND would train her and she would shadow ND for a minimum of a week.
18. Mr Houghton says they merely had a brief chat about invoicing and that she told him she did not pay tax or national insurance and did not know how to raise an invoice. However, I accepted the claimant’s evidence that, having been manager of a care home and a professional over her lengthy career she knew how to raise an invoice and would have done so had that been asked of her. The claimant agrees Mr Houghton asked her for information about tax and national insurance and says she provided it to him by email on two occasions, telling him she did not pay tax or national insurance because she was over state pension age. Her evidence was very specific, that she sent a first email but accidentally gave him the wrong last two digits of her national insurance number, so sent it again. The inclusion of this irrelevant, but precise detail in her oral evidence, persuaded me that her account was authentic, whereas Mr Houghton’s account by comparison was rather vague. I therefore accepted that this email exchange took place. I preferred the claimant’s account of the conversation between herself and Mr Houghton.
19. Mr Houghton says he was the only person with the power to legally contract with others, either by employing or entering into some other kind of contract with them. He says ND was not authorized to enter into contracts with employees or anyone else. He gave evidence that her job title of ‘Branch Manager’ was not an accurate description of her job, but merely gave her “a bit more gravitas” when dealing with clients. However, in my judgment, the title ‘Branch Manager’ gives the impression that ND held a managerial position and was therefore a person of some authority in the business. The fact that she was the person conducting the majority of conversations with the claimant about her position with the respondent, including what Mr Houghton characterises as being ‘freelance’, suggests that ND and Mr Houghton himself were holding ND out as representing the company and having authority to enter into contractual arrangements on the company’s behalf. It was ND who entered into the verbal arrangement with the claimant, even on Mr Houghton’s evidence. He accepted in evidence that ND was authorized to offer the claimant a ‘freelance’ position (see paragraph 22 below). I find that the claimant believed ND was authorized to enter into a contract for services with her.

20. Mr Houghton gave evidence that, when the claimant came to provide the data he was buying, it became clear that the information was on pieces of paper and needed to be put into a useable computerized format. Mr Houghton says that the claimant therefore came into the office for three days towards the end of July 2021 to transfer the data onto the computer. The claimant says she only ever provided 2 contacts from her previous professional life to the respondent. Mr Houghton says there were 8 or 9 bits of paper, containing around 45 to 50 contacts. However, he did not explain why 2 or 3 days of work would be required to computerize them.
21. The claimant says she commenced work on 1 July 2021 and that her role was to contact candidates by telephone or text message to ascertain if they were still interested in seeking employment and to conduct pre-screening interviews with them. If a candidate looked promising, she described how she would hand the information on to Ms Davies so she could put it on a spreadsheet on the computer and use the information for the prospective client. The claimant says she did not place candidates with clients. The claimant says in August 2021 her role increased to 3 days per week because of the heavy work schedule, requiring her to work Tuesday, Wednesday and Thursday. I found her description of her role more persuasive than Mr Houghton's account of her presence in the office. I accepted her evidence that she believed she was working for the respondent under a contract of service or for services.
22. Mr Houghton's evidence was that, at some point during the three days when the claimant was transferring her contacts to the computer, there was a conversation between the claimant and ND about the claimant working 'freelance', which he "didn't take much interest in". He said that, had there been talk of giving the claimant a job or employing her, he would have put a stop to it. His evidence was, in essence, that she could not have been employed because there was no advert, no interviews, no contract, no references taken, no offer letters and, in any event, he would not have considered employing someone with the claimant's limited recruitment experience nor paying them the wages the claimant says she was paid. Mr Houghton's evidence was that the claimant was 'freelance', meaning that she would be entitled to a percentage of the successful placement fee earned for placing candidates with clients. He made reference in his evidence to the definitions of employment and other types of work status used by HMRC for tax purposes.
23. I found Mr Houghton's evidence somewhat contradictory. He was emphatic about the nature of the arrangement with the claimant, but accepted that he did not take much interest in the conversation between ND and the claimant. I conclude, therefore, he could not be certain what exactly had been agreed between them. A further contradiction was that Mr Houghton emphasized in his evidence how the arrangement was that the claimant was to raise invoices and he should not have paid the £375 to her without an invoice, but he accepted that he had in fact paid it to her without any invoice. He also gave evidence that he could not have intended to employ the claimant because he had dismissed another employee two weeks previously owing to the lack of work. Later in his evidence, however, he referred to having taken on "one or two" employees since the claimant's involvement with the company ceased. He accepted that one person attended the office as part of a recruitment

selection process while the claimant was still present in the office. I judged this evidence to be internally inconsistent. Further, Mr Houghton characterized his tolerance of the claimant's presence in the office as doing her 'a favour', but if that was his intention it conflicts in tone with the abrupt ending of the arrangement and his failure to respond to her emails (see below).

24. It is not disputed that the claimant was issued with an id badge giving her job title as 'recruitment consultant', though Mr Houghton says this was merely a formality for the security contractors at the serviced offices the respondent used. She was also issued with a key, a mobile phone and a laptop. The claimant says that she asked Mr Houghton on several occasions when she would be receiving a contract and his response was that he was "dealing with it". Mr Houghton denied those conversations and gave evidence that he did not issue a contract because she was freelance. However, he accepted that at least one other freelancer had a written contract. I conclude that I cannot draw any conclusions as to the claimant's status either way from the absence of any written contractual documentation.
25. The claimant says she received a payment of £375.00 on 30 July 2021 but no other payment. As noted above, that payment was paid free of tax and national insurance, and without any invoice being raised or payslip provided. I accepted the claimant's evidence that she does not pay tax and national insurance because she is aged 75 and does not earn above the tax threshold.
26. The claimant says she received a telephone call on 30 August 2021 from ND telling her not to go into work the following day and that Mr Houghton had requested her office key, ID badge and works phone be returned. She says that, when she asked why, ND told her it was because Mr Houghton had said there was no work for her.
27. It is not disputed that the claimant returned the items requested to ND on 1 September 2021 and received a handwritten receipt for them. She also sent an email to Mr Houghton confirming that all the property had been returned and saying "Could you please forward my pay to my bank before close of day tomorrow...it was a pleasure working for you, all be it short lived" (claimant document 5, part 2).
28. Mr Houghton responded by email the same day, saying "I'll put through the money you are due ASAP" (claimant document 5, part 1). He did not contradict her use of the term 'pay'. The claimant sent further emails on 2 September 2021 (claimant document 5, part 1), 7 September 2021 (claimant document 4), and 1 October 2021 (claimant document 2) referring to wanting payment for her "wages", "pay" and needing "payslips". Mr Houghton did not respond, either to address her question about payment, nor to contradict her reference to wages, pay or payslips. He did not explain why he failed to respond.

## **The law**

29. Section 230(3) ERA defines a 'worker' as an individual who has entered into or works under (or, where the employment has ceased, worked under):
  - a) a contract of employment ('limb (a)') or
  - b) any other contract, whether express or implied and (if 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 ('limb(b)').

30. A contract is created where there is an offer, acceptance and consideration (e.g. money is paid for work/work is done for money), the terms are certain and the parties intend their agreement to create legal relations.
31. For an offer to be binding, the person making it must have authority to make such a binding contract on behalf of the respondent. It is established by case law that, where an employee who is acting in the ordinary course of their employment on their employer's behalf makes a contract which falls within the apparent scope of their authority, the employer cannot escape liability on the ground that it did not authorize the contract. Even if the employer forbade the employee making the contract, provided the person dealing with the employee is not on notice of the fact that the employee does not have authority, they are entitled to assume that the employee possesses the authority which it is usual for an employee in that position to possess. The employer, therefore, by placing the employee in that position, impliedly holds the employee out as having such authority.
32. Section 13 of the Employment Rights Act "ERA" sets out the right not to suffer unauthorised deductions:
- (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*
    - (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—*
    - (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*
    - (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.*
  - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

## Determinations

33. According to Mr Houghton there were two arrangements with the claimant. The first was a contract to buy data, although this shifted to include the claimant spending three days converting the data into a useable form, i.e. working. The second was a 'freelance' arrangement. Even on the respondent's case, therefore, there were two contractual arrangements in place between the respondent and the claimant, albeit that they were oral and there is dispute about the express and implied terms of those contracts.
34. I preferred the claimant's evidence as to the agreement reached with ND and the nature of the claimant's role. The claimant provided the only first-hand evidence of what was discussed between her and ND, other than ND's witness statement, to which I attach little weight for the reasons set out above.
35. I judge, from the conversations between ND and the claimant, that the contract was for the claimant to carry out personal services in the role, alongside ND, based on their personal friendship and previous work together. Even on Mr Houghton's account, it was the claimant's contacts he wanted and she would not have been able to send someone else to provide those contacts. Personal service was key to the arrangement.
36. I find that the claimant's role, as a recruitment consultant, contacting potential candidates and passing information to ND, was not that of providing a service to a client or customer of her own profession or business undertaking. The claimant was not in business on her own account, but was working for the respondent. Even on Mr Houghton's account, there was some degree of mutuality of obligation because she was expected to provide her contacts to the respondent in return for payment. He described how he was not satisfied with information being provided on pieces of paper and required it to be transferred to computerised form. I find from the claimant's evidence regarding her instructions from ND on how to do the work, her shadowing of ND and training by ND, that the respondent had control over how the claimant did the role. ND and Mr Houghton provided the claimant with the cvs of candidates whom she was expected to contact. The fact that she was paid £375 without needing to raise an invoice supports her evidence that she was not an independent contractor, and the provision of the mobile phone, id card (identifying her job title) and laptop suggest that she was integrated within the business. She was also issued with a key so she could work from the respondent's premises. The payment made to her was done by PAYE, albeit that there were no deductions for tax or national insurance because of her age, and the fact that Mr Houghton requested and she sent him her national insurance number, also suggests integration within the respondent's business.
37. The practical reality of the arrangement appears therefore to have been that the claimant was doing work for the respondent and the respondent had promised to pay her for it and, indeed, did pay her for part of it. Mr Houghton's submission was, in essence, that the claimant was not a worker because he would not have contracted with her to be a worker.
38. However, in my judgment the contractual arrangement was concluded between the claimant and ND on behalf of the respondent. It was ND who offered the claimant work as a recruitment consultant and confirmed the rate

of pay when queried (the 'offer') and ND to whom the claimant accepted the offer (the 'acceptance'). The other components to form a contract were present: there was consideration (the claimant did work for money and money was paid for the claimant's work) and an intention to create legal relations. ND and the claimant entered into a contract for work for payment of £125 gross per day. The claimant worked a total of 17 days in that role, in the expectation of payment at the rate orally agreed. The respondent paid her £375 gross, amounting to 3 days' work, but did not pay her for the remainder of the time she spent working.

39. The main issue is therefore whether ND had authority to enter into the contractual arrangement described by the claimant on behalf of the respondent. Mr Houghton says she did not. However, he accepted that she had authority to engage the claimant as a freelancer. In my judgment, the nature of the arrangement described by the claimant is not sufficiently different that it would be clear to others that ND would be authorized to contract on the company's behalf for the purchase of data or to retain her on a 'freelance' basis, but not to contract for services. Mr Houghton also accepted that ND's job title 'Branch Manager' was intended to give her 'gravitas'. I find that, given the very small size of the respondent's business, ND's job title, the fact that Mr Houghton showed interest in a contractual agreement with the claimant and approved a financial offer to the claimant (albeit that he says it was not the arrangement the claimant suggests) and the fact that he did not contradict ND's engagement of the claimant nor object to the claimant's presence in the workplace, were all signs that ND had, or appeared to have, authority to contract with the claimant.
40. The claimant genuinely believed she was contracted to work by ND, on the respondent's behalf and was not on notice that ND did not have authority to contract. In my judgment, the claimant was entitled, from ND's job title and the conversations they had together, to assume that ND had authority to contract. Even if Mr Houghton was not a party to the agreement by ND for the claimant to provide work for the respondent as the claimant described, he was still, in my judgment, bound by that contract.
41. I find, therefore, that there was a contract for services between the respondent and the claimant. She was therefore a 'limb b' 'worker' for the respondent, according to the definition in section 230 ERA. The terms of the contract were that she was to be paid £125 per day for her work. She received 3 days' pay, but worked a further 14 days for which she did not receive any payment. Under the terms of the contract wages of £1,750 gross were properly payable to her.
42. The respondent did not pay her those wages. The claimant had not provided her agreement to any deduction in writing in advance and the respondent therefore made an unauthorised deduction from her wages.

43. The respondent shall pay the sum of £1750 gross to the claimant.

**EJ Bright**

**31 January 2022**