



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T F Olajumoke

**Respondent:** S J Global Investments Worldwide Limited  
(In Voluntary Liquidation)

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** Monday 6 September 2021

**Before:** Employment Judge Russell

**Representation**

**Claimant:** In Person

**Respondent:** Not attending and not represented

## JUDGMENT

1. The Claimant was a worker within s.230(3)(b) of the Employment Rights Act 1996.
2. The Tribunal has jurisdiction to hear the claim of unauthorised deduction from wages.

## REASONS

1 By a claim form presented to the Employment Tribunal on 18 December 2019 the Claimant brings a claim for unauthorised deduction from wages in respect of work undertaken for the Respondent between 1 August 2018 and 31 October 2019. The Claimant's case is that he was an employee, alternatively a worker, and is therefore entitled to bring the claim. In its ET3, the Respondent avers that the Claimant was always a self-employed consultant, responsible for his own taxation and paid upon the submission of monthly invoices. As such, it said that the Tribunal lacked jurisdiction to hear the unauthorised deductions claim.

2 A Preliminary Hearing was listed to determine the preliminary issue of employment/worker status. After several unsuccessful attempts to hold the hearing remotely, I directed that the case should be heard in person.

3 Since the claim has been issued, the Respondent has gone into voluntary liquidation. It is not present or represented today, but from perusal of the file I am satisfied that it is aware of the hearing and that it is appropriate to proceed in its absence.

## Law

4 Section 230(3) of the Employment Rights Act 1996 has two limbs by which a person may demonstrate status conferring jurisdiction on the Employment Tribunal. Section 230(3)(a) defines an “employee” as a person who works under a contract of service. This may be express or implied and, if express, either oral or in writing. The classic description of a contract of employment may be found in **Ready Mixed Concrete (South East) Ltd –v- Minister of Pensions and National Insurance** [1968] 2 QB 497, it required provision of service in return for remuneration, agreement to subject to the other’s control and that the other terms of the contract are consistent with it being a contract of service. It is well established that control alone cannot determine employment status; the contract must also necessarily relate to mutual obligations to work and to pay for (or provide) it.

5 Section 230(3)(b) defines a worker as an individual who has entered into or works under any contract whereby the individual undertakes to perform personally any work or services for another party to the contract and his status is not by virtue of the contract that of a client or customer of any professional business undertaking carried on by the individual.

6 When considering worker status, a focus upon whether the purported worker actively markets his services as an independent person to the world in general on the one hand, or whether he is recruited by a principal to work for that principal as an integral part of the principal’s operations, will in most cases demonstrate on which side of the line a given person falls. There must be an obligation to perform work personally and the existence or otherwise of a right of substitution will be relevant. I had regard to the Judgment of the Supreme Court in **Pimlico Plumbers Limited & Another v Smith** [2018] UKSC 29.

## Findings of Fact and Conclusions

7 The Claimant and the Respondent entered into a written contract for the provision of his services. It is described as being a consultancy agreement and it suggests that it is not an offer of employment and does not confer employment status. However, I considered that I must look at the reality of the way in which the services were provided and not the label attached by the parties. In so doing, I accepted the Claimant’s evidence given to me on oath today.

8 Whilst the contract refers to payment upon submission of invoice, I accept as truthful the Claimant’s evidence that when he commenced work, there was no requirement to submit an invoice. He was paid the same monthly amount without an invoice until at least April 2019. I also took into account the manner of payment. I accepted as truthful the Claimant’s evidence that payment was made by bank transfer into his personal

account with deductions for tax and National Insurance. Neither of these are consistent with a consultancy arrangement.

9 As for the manner in which the services were provided, the Claimant was required to attend work on regular days and for regular hours by the Chairman and I am satisfied was required to perform his work personally. The Claimant had his own laptop but also used a laptop or computer provided by the Respondent in the office. The Claimant was required under the contract and in fact to perform his services personally. I find that he was recruited to work as an integral part of the Respondent's operation and the Claimant was not providing his services in the capacity of a professional business.

10 The Respondent relies heavily upon the written consultancy agreement as strong evidence against employment or worker status. However, the weight of the written agreement is fundamentally undermined by the fact that it incorrectly shows the monthly rate of pay as £6,500 per month and not the £8,000 which was in fact ultimately agreed and paid.

11 In light of the facts as I have found them, I conclude that the Claimant is a "limb B" worker. It is not necessary for me to decide whether or not he was an employee as worker status is sufficient to confer upon the Employment Tribunal jurisdiction to hear the claim.

12 A final hearing with a time estimate of 2 hours will now be listed. The parties must disclose any further relevant documents by **29 October 2021** and exchange witness statements by **12 November 2021**.

**Employment Judge Russell**  
**Date: 5 October 2021**