



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Martin

**Respondent:** Zoon Link Ltd

**Heard via Cloud Video Platform in the North East Region**

**On:** 20 April 2023

**Before:** Employment Judge Ayre (sitting alone)

## **Representation**

**Claimant:** Did not attend and was not represented

**Respondent:** Mr C Buck, Senior Recruiter

# JUDGMENT

The claim fails and is dismissed.

# REASONS

## **Background**

1. The claimant issued proceedings against the respondent on 28 July 2022 following a period of early conciliation that started on 20 June 2022 and ended on 28 July 2022. The original claim was for unfair dismissal, breach of contract and unlawful deduction from wages.
2. The unfair dismissal claim was struck out in a judgment sent to the parties on 26 September 2022. The breach of contract claim was struck out in a judgment sent to the parties on 4 January 2023.
3. A Preliminary Hearing took place before Employment Judge Maidment on 3 January 2023. At that hearing, which the claimant attended, it was identified that the only

outstanding claim was one of unlawful deduction from wages in the sum of £4,500. The case was listed for a final hearing and case management orders made.

### **The Proceedings**

4. The hearing took place via Cloud Video Platform. It was due to start at 2pm. Mr Buck attended the hearing on time on behalf of the respondent. The claimant did not attend and was not represented.
5. A member of Tribunal staff attempted to contact the claimant by telephone on 4 occasions but there was no answer. On 17 April the claimant had sent an email to the Tribunal in which he wrote: “...*It is pointless for me to waste more of my time going ahead with the meeting on 20/04/23, until you do some actual work & make them pay me.*”
6. Mr Buck indicated that the respondent had not received any documents or witness statements from the claimant.
7. I waited until 2.20pm and then decided to proceed with the hearing in accordance with Rule 47 of the Employment Tribunals Rules of Procedure.
8. I heard evidence under oath from Mr Buck.

### **Findings of Fact**

9. The respondent is a recruitment company that puts potential workers in contact with clients. It was made aware by Hayes that their client, Computacentre, needed staff to work on site at Rolls Royce.
10. Mr Buck recruited the claimant to fill one of these roles. The respondent did not enter into any contract with the claimant. It merely introduced the claimant to the role. The claimant was then contracted to an umbrella company, Nasa Umbrella Limited, which was his employer and responsible for paying him.
11. There was no contract of employment or other contract between the claimant and the respondent. The arrangement was that the claimant would work on site at Rolls Royce and that he would be contracted to and paid by Nasa Umbrella Limited.
12. The claimant did not carry out any work at Rolls Royce because he did not pass the necessary security clearance.

### **Conclusions**

13. Complaints of unlawful deduction from wages under the Employment Rights Act 1996 (“**the ERA**”) can only be made by employees or workers. The relevant definitions are contained in section 230 of the ERA which provides as follows:

*“(1) In this Act “employee” means an individual who had 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.*

*(3) In this Act “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 business undertaking carried on by the individual;*

*and any reference to a worker’s contract shall be construed accordingly...”*

14. The claimant had no contract with the respondent. His contract was with Nasa Umbrella Limited, which is not a party to these proceedings.
15. The claimant was therefore neither an employee or a worker of the respondent and cannot pursue a complaint of unlawful deduction from wages against the respondent.
16. The claim therefore fails and is dismissed.

Employment Judge Ayre

Date: 20 April 2023

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