



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr M Rahman

Ministry of Justice

ORDER ON RECONSIDERATION

1. The application for reconsideration is refused, as there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. Mr Rahman has sought a reconsideration of the decision that the Tribunal lacked jurisdiction to hear his complaints, as he was not an employee as defined in the Employment Rights Act 1996 s. 230(1) and (2), nor a worker as defined in the Employment Rights Act 1996 s. 230(3).
2. In his application, he makes the following points:
 - 2.1 He has been doing the same job as other full-time employees for 9 years.
 - 2.2 It does not take into account the Court of Appeal's recent decision in *Pimlico Plumbers Limited v Smith* [2017] EWCA Civ 51; in particular (with reference to that case), he did not have an unfettered right to provide a substitute.
3. I have considered those points carefully. First, the fact that the Claimant has done the same work as someone who is an employee for many years does not establish that he is himself an employee. As Mummery LJ said in *James v Greenwich LBC* [2008] ICR 545, at para. 42:

"The mere passage of time did not generate a legal obligation on the part of the council to provide (the claimant) with work any more than it generated a legal obligation on (the claimant) to do the work."

4. Secondly, I have now read the Pimlico Plumbers decision, which had not been handed down when I wrote this Judgment. I have paid particular attention to the discussion and analysis of substitution and reminded myself of my finding that the Claimant was able to provide a substitute, as long as that person was a Muslim chaplain with the necessary clearance. I believe that falls within what the Court of Appeal stated, as follows (at para. 82):

“a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality;”

5. It remains my view that, weighing up all the factors and in the circumstances of this case, that conditional right to substitute did not weigh sufficiently in the Claimant’s favour to suggest he was an employee/worker. Nothing else in the Pimlico Plumbers case alters my findings and conclusions.
6. Therefore, the application is refused, as there is no reasonable prospect of the decision being varied or revoked.

Employment Judge Cheetham
Date: 13th March 2017