



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr C Poskitt

AND

Industrial Recruitment UK Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Middlesbrough

On: 12 July 2017

Before: Employment Judge Hargrove

Appearances

For the Claimant: In person

For the Respondent: Mr M Marsh, Director

JUDGMENT

The claimant's claims of unpaid wages and holiday pay due on termination of his employment are not well-founded.

REASONS

- 1 The claimant commenced his claims against the above-named respondent having been employed as an industrial cleaner at a biomass fuel site known as Wilton 11 between 27 June and week ending 25 November 2016. The respondent denied that it was the claimant's employer and claimed in the response that it acted only as an agency on site and named as the claimant's employers two companies, Generate FS Limited and Pay Me Limited. They were added as the second and third respondents and served. They submitted responses. Subsequently, on 5 May 2017 and 10 July 2017, respectively the Employment Tribunal was notified that COT3 settlements had been entered into

via ACAS. The claimant admits that he has received not insubstantial sums of money from those respondents.

- 2 It is necessary for the claimant to prove as a starting point that he was employed by the remaining respondent for any period. Next he must prove that he was not paid for all the hours worked; and thirdly that he was underpaid holiday pay under an unlawful rolled up pay arrangement. In fact he took no holiday pay during his employment.
- 3 Having heard the claimant's evidence and that of Mr Marsh, and carefully considering various documents recording the claimant's pay produced by the claimant – which are not payslips, I am satisfied that the respondent was not his employer, but that the employer was a company who has never been made a party to these proceedings, M&M Industrial Services Limited (although a subsequent search of the Companies House website shows no company of that name) of which the two Directors were said to be Mark and Matthew Pemberton, which company had an industrial cleaning contract with the site owner or manager. The former second and third respondents were in effect payroll companies through which the claimant's pay was channelled; and Mr Marsh's company acted as a recruitment company or agency which was remunerated by adding a fee to the wages in a document which was provided to the employer. I had some doubt about the identity of the employer because the respondent did not name M&M Industrial Services Limited in its ET3. However the claimant confirms his knowledge of the existence of that company or a business with a similar name and its Directors being on the site; and that he regarded Mr Marsh as the agent. He was no doubt confused by the wage documents which he eventually received.
- 4 I have expressed concerns about the lack of transparency in the multi-partite employment arrangements under which this claimant and, it seems, others including his nephew Terrence Watson were employed. The former second and third respondents being payroll companies and not employers, it is mystifying why they should have paid sums to the claimant by way of settlement. However I am satisfied that the remaining respondent was not his employer and the claim must accordingly fail even though the claimant may well be owed wages and the rolled up holiday pay arrangement may well have been unlawful.

EMPLOYMENT JUDGE HARGROVE

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON**

13 July 2017

JUDGMENT SENT TO THE PARTIES ON

14 July 2017

AND ENTERED IN THE REGISTER

Case Number: 2500277/2017

**G Palmer
FOR THE TRIBUNAL**