



EMPLOYMENT TRIBUNALS

Claimant
Mr J Warrilow

v

Respondent
Openwork Ltd

RECONSIDERATION ON PAPER

Heard at: Watford
Before: Employment Judge Jack

On: 31 July 2018

Appearances:

For the Claimant: In Person
For the Respondents: Ms S Omeri, Counsel

JUDGMENT ON RECONSIDERATION

1. The claimant's application for reconsideration of the judgment sent to the parties on 30th August 2018 is refused.

REASONS

1. By letter received by the Tribunal on 29th August 2018 the claimant seeks a reconsideration of the judgment given orally on 31st July 2018 and subsequently sent to the parties in written form on 30th August 2018.
2. The point raised by claimant is that under what is known colloquially as IR35, he should have been treated as an employee of the respondent. The effect of IR35, he argued, was that Alban Financial Services Ltd, dropped out of the picture.
3. This in my judgment is wrong for at least two reasons. Firstly, Alban Financial Services Ltd was not a personal services company. It had other employees than the claimant and was a completely bona fide company carrying on its own business. It was not a vehicle for the claimant to provide personal services to the respondent ("the client" in the language of the legislation).

4. Secondly, section of 50 of the Income Tax (Earnings and Pensions) Act 2003, which is the Act governing IR35, provides:

Worker treated as receiving earnings from employment

- (1) If, in the case of an engagement to which this Chapter applies, in any tax year—
- (a) the conditions specified in section 51, 52 or 53 are met in relation to the intermediary, and
 - (b) the worker, or an associate of the worker—
 - (i) receives from the intermediary, directly or indirectly, a payment or benefit that is not employment income, or
 - (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,
- the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (2) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.
- (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
- (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).

5. Section 51 is the relevant condition in section 50(1)(a). It applies (among other cases) where, as here, the intermediary is owned by the worker. However, as can be seen from section 50(1) (at the end), if IR35 applies, then the effect is that the payment made by the intermediary (Alban Financial Services Ltd) to the worker (the claimant) is treated as earnings from employment. In other words, payments such as dividends made by Alban Financial Services Ltd to the claimant are subject to income tax and national insurance as if they were earnings of the claimant.

6. What section 50 does *not* do is make the worker an employee of the client (Openwork Ltd). It creates no contractual relationship between the claimant and the respondent. Accordingly, even if IR35 applied, it would not assist the claimant in showing a contractual relationship between him and the respondent.

Employment Judge Jack 01/10/2018

Sent to the parties on: 15 October 2018

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For the Tribunal:

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