Case Numbers: 2303063/2019
2303064/2019
2303065/2019
2303066/2019
2303067/2019
2300368/2019

# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr S Cameron**

**Respondents:** **Rishworth Aviation Ltd R1**
**Norwegian Air UK Ltd R2**
**Norwegian Air Shuttle ASA R3**
**Norwegian Air Resources Share Service Centre AS Branch UK R4**
**Norwegian Air Resources Asia Pte Ltd (formerly Norwegian Long Haul Singapore Pte Ltd) R5**
**Global Crew UK Ltd R6**

**Heard at:** **Croydon** **On: 6/2/2020**

**Before:** **Employment Judge Wright**

**Representation:**
**Claimant:** **In person**
**Respondent:** **Ms T Barsam – counsel (R1, R2, R3, R4 and R6)**
**Mr P Bownes – solicitor (R5)**

# JUDGMENT

It is the judgment of the Tribunal that the claims against R1-R5 are dismissed under Rule 27 as they have no reasonable prospects of success.

1. Oral judgment was provided at the hearing on 6/2/2020. In accordance with Rule 62(3)on the 14/2/2020 the respondents (excluding R5) requested written reasons.

2. The Tribunal found the respondent to this claim is R6 Global Crew UK Ltd. All other respondents are dismissed from the proceedings.

3. The hearing was to determine a point of law only; which entity was the employer of the claimant? The Tribunal was not tasked with and did not make any findings upon how companies structure themselves and if they do so in a way so as to avoid liability to an individual claimant. As long as the arrangement is not unlawful (there is no allegation that is the case), a company is entitled to structure its business so as to avoid any liability. In the same way an entity can incorporate as a limited liability company and avoid individual liability, companies can structure themselves so as to avoid liability for employment claims against certain entities.

4. There is a contract of employment between the claimant and R6 dated 25/2/2016. That contract complies with s.1 Employment Rights Act 1996 and covers all aspects of the employment relationship which would expect to be covered (page 147). This contract lists R6 as the employer. The contract does refer to the client Norwegian Longhaul Singapore Pte Ltd R5 as the client (now called Norwegian Air Resources Asia Pte Ltd), it is not however a contract between R5 Norwegian Longhaul Singapore Pte Ltd and the claimant. There is nothing misleading about this document and it is not a sham. It is clearly a contract between claimant and Global Crew UK Ltd/R6 and it provides that the claimant will be providing piloting services to the client/Norwegian Longhaul Singapore Pte Ltd/R5.

5. There is an employee handbook running to 71 pages, which details all HR aspects that an employee can expect to crop up during employment (page 181).

6. Indeed, the claimant invoked the grievance procedure against Global Crew UK Ltd/R6 on 31/1/2019 (page 274). The claimant wrote to Mr Odqvist to say that he was raising a formal grievance: ‘as my employer you have a duty of care to protect me’ from harassment and intimidation. He refers to an investigation by Rishworth/Global Crew R1 and R6. The claimant did refer to Rishworth and Global Crew UK

Ltd as being one and the same, they are however separate legal entities and Global Crew UK Ltd/R6 is a subsidiary of Rishworth/R1.

7. There is a separate contract between Global Resources Aviation Singapore Pte Ltd GRSL and Norwegian Longhaul Singapore Pte Ltd/R5 dated 21/11/2012 (page 160) for the provision of services of aircraft crew. The Tribunal was told and it accepts that GRSL then delegated this task to its subsidiary, Global Crew UK Ltd/R6, which is the correct respondent/employer in this case.

8. The Tribunal was helpfully taken to the authority of Smith v Carillion (JM) Ltd [2015] EWCA Vic 209. The claimant is an agency worker and was supplied to Norwegian Singapore/R5. There was no express contract between the claimant and Norwegian Singapore/R5. There was no need in view of the express contracts, to imply a contract. It is not unusual for an agency worker to be integrated into the end users/client's business, for example here, the claimant wore a Norwegian uniform and it would appear to an outsider that he worked for Norwegian. That integration does not however give rise to an employment relationship.

9. The agency/Global Crew UK Ltd/R6 paid the claimant's wages after invoicing Norwegian Singapore R5 and presumably charging it a premium. The onus is on the claimant to establish a contract should be implied between him and Norwegian Singapore/R5 and it can only be implied if it is necessary to do so. An implied contract is not warranted because the conduct is consistent with the express contractual arrangements. There is no sham and there is not a case where the true nature of the arrangement is being concealed. The reality is that Global Crew UK Ltd/R6 employed the claimant and provided his services to Norwegian Singapore.

10. The final point is that it is not against public policy for Global Crew UK Ltd/R6 to supply the claimant's services to Norwegian Singapore/R5, even when the purposes is to avoid legal obligations which would otherwise arise. Clearly the claimant is not happy with this state of affairs, however as noted in Smith v Carillion, a contract cannot be implied simply because there is disapproval of how Global Crew UK Ltd/R6 has chosen to structure itself or indeed because Norwegian Singapore/R5 seemingly seeks to avoid being the employer of this claimant.

11. The Tribunal therefore finds that the correct respondent to this claim is Global Crew UK Ltd/R6.

26/2/2020

Employment Judge Wright

JUDGMENT SENT TO THE PARTIES ON: