



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant**

and

**Respondent**

Mr A Skrzypczak

Synergy Security (UK) Limited (1)

BP Outsourcing Solutions Limited (2)

Spree Contracting Limited (3)

**Held at: Exeter by video**

**On: 17 December 2020**

**Before: Employment Judge Smail**

### Appearances

**Claimant:**

In Person

**First Respondent:**

Mrs Watson (HR Consultant)

**Second Respondent:**

Struck off companies house register

**Third Respondent:**

No appearance

## JUDGMENT

1. The Claimant was a worker of the First Respondent within the meaning of Regulation 2 of the Working Time Regulations 1998.
2. The First Respondent must pay the Claimant £1,650 holiday pay.
3. The First Respondent must pay the Claimant £800 preparation time.
4. The total the First Respondent must pay the Claimant is £2,450 which must be paid within 14 days of this Judgment being sent to the parties.

# REASONS

1. The claimant worked as a security guard. Where he worked, when and at what rate of pay was determined by the first respondent, in particular, its director or manager, Jema Paull.
2. Payment for his work would be made through the second respondent. They would issue payslips and pay the money into the claimant's bank account. The payslips show, and Mrs Watson has confirmed, that the source of the gross pay indicated on them was the first respondent. The first respondent would pay the gross pay to second respondent, having received payment from the client. The hourly rate and the number of hours worked were shown on the payslips. Tax and national insurance as though the claimant were an employee were then deducted.
3. The claimant suggests the second respondent acted as a payroll company. Their actions suggest that is accurate.
4. The Claimant would work every Friday and Saturday at various venues which contracted directly with the first respondent. He was also available three other nights in the week but the number of hours was variable for these. Those weekday venues also contracted directly with the first respondent
5. The claimant worked in this way from 9 August 2018 until in or around November 2019, when he sustained an injury. He remained on the books until March 2020. When injured, he claimed holiday pay and statutory sick pay and was refused these by the first respondent
6. The claimant has told me about his appointment. He was interviewed by Ms Paull and told how the work would operate. She was in control of what work he did, where and when. There was no practice of substitution whereby he could field a replacement. There was a discussion once with Ms Paull about cover by someone else. She said she would have to approve the person. It never happened in practice, however. The practice was that the claimant was expected to attend the venues as instructed. Ms Paull expressly told him that she did not pay holiday pay. The claimant did not challenge that at the time. He does challenge it now.
7. In its defence to the claimant's claim for holiday pay and statutory sick pay, the first respondent pleads that there was an elaborate contractual scheme, which meant that they are not liable. They claimed that whilst they contracted with the end clients for security services, labour was provided to them by the second respondent who in turn contracted with the third respondent. The claimant, they said, had a contract with the third respondent, notwithstanding that when the claimant worked as a security guard, he was wearing clothing marked with the first respondent's insignia.

8. There is in the bundle a document purporting to be a self-employed engagement agreement between the third respondent and the claimant. The claimant tells me, and I accept, that he had not seen this document before disclosure and certainly he has never signed it. The claimant's case that the suggested contractual arrangement involving subcontracts for the provision of self-employed labour is a sham and does not reflect the true intention of the parties. I agree.
9. The claimant worked for the first respondent. He was paid by the first respondent through payroll services of the second respondent. He has no relationship with the third respondent which existed, if at all, as a piece of paper only. The third respondent is one of a number of paper companies registered to an office suite in Swansea.
10. The claimant has given evidence to me. The first respondent has declined to call evidence. Every indicator, in my judgment, points to a sham. Regulation 2 of the Working Time Regulations 1998 defines worker as:-

'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.

11. In my judgment it is clear that the claimant was a worker on behalf of the first respondent. He entered into an oral contract with them. He provided personal services to their business. The first respondent was not a client of his. The agreement was that he would work as a security guard on an agreed hourly rate for the hours and at the venues that they directed.
12. The claimant was at least a 'limb (b)' worker for the purposes of holiday pay. I don't have to decide whether he was an employee or not. I leave that as an open question. The Claimant is owed £1650 for holiday pay, which must be paid by the first respondent within 14 days.
13. The claim for statutory sick pay is not one for the employment tribunal. It is for the statutory payment dispute team of HMRC. It is dealt with by the tax people. The Claimant will need to go on-line which gives their contact details.

14. The claimant claims preparation time. I agree that the first respondent's attempt at avoiding paying holiday pay is misconceived and unreasonable. Accordingly, I allow 20 hours at £40 an hour.

Employment Judge Smail

Dated: 17 December 2020

Judgment sent to parties: 13 January 2021

For the Tribunal Office