Employee who changed his status to subcontractor for £200 was a worker and was entitled to holiday pay

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Employee who changed his status to subcontractor for £200 was a worker and was entitled to holiday pay Bale-outs?

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The Employment Appeal Tribunal has found that a claimant who changed his status from general labourer to a labour-only subcontractor in exchange for £200 was still a "worker" under the Employment Rights Act and the Working Time Regulations and was therefore entitled to holiday pay.

Mr Holden was employed by Plastering Contractors Stanmore Ltd as a general labourer between April 1997 and February 2001. From February 2001, Mr Holden agreed to become a labour-only subcontractor for a one-off payment of £200. After this, Mr Holden was put on Stanmore's database of labour-only subcontractors. When work was needed at a particular site, Mr Holden was asked to perform it. He worked on many sites and whilst he was there, he would be under the instruction of the site supervisor. He could be paid by price or time spent completing work (the rates for which were set by Stanmore) and he was paid under Stanmore's scheme rather than by submitting invoices. Save for his own safety boots, the remaining equipment was provided by Stanmore. Although there was no obligation for Stanmore to offer Mr Holden work or for Mr Holden to accept it, Mr Holden worked almost exclusively for Stanmore until he decided to take up similar work with another company.

Mr Holden brought a claim against Stanmore arguing that he was a worker and Stanmore's failure to pay him holiday pay was an unlawful deduction from his wages under the Employment Rights Act.

The EAT held that Mr Holden was a worker for the purposes of the Employment Rights Act and the Working Time Regulations. Stanmore argued that because it and Mr Holden were not obliged to offer or accept work respectively there was insufficient mutual obligation for Mr Holden to be a "worker". The EAT held

that mutuality of obligation existed during each short assignment rather than during the entire arrangement. Stanmore also argued that any individual who was allowed to appoint a substitute pointed to there being no obligation on him to render personal service and therefore Mr Holden was not a worker. The EAT held that this did not reflect the reality of the arrangement. Finally, Stanmore argued that it had no right of control over Mr Holden. The EAT found that this argument was “fanciful”. Whilst Mr Holden’s experience meant that he required very little supervision, he still had to do what he was told.

Plastering Contractors Stanmore Ltd v Holden UKEAT/0074/14

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