

CIS4 subcontractor not an employee for purposes of unfair dismissal, redundancy pay and notice pay

The facts of this case were that the Claimant had worked for our client, the Respondent, from April 1999 to August 2005. The Tribunal found that there was a gap from April to September 2000, so the period of employment was not continuous for the whole period as had been claimed by the Claimant.

The Claimant was employed under a contract of employment until July 1999 when he switched to the CIS4 contract. He refused to sign a written contract and only signed the second renewal contract because, he alleged, he was duped to believing it was to do with insurance.

The Tribunal did not consider the contract reflected what happened in practice in many ways and that despite the express terms, the parties had intended, in the latter stages of their contractual relationship, that the Claimant would provide his services personally. The Claimant was a foreman, responsible for “operational responsibility”. However, the Tribunal did not accept this was necessarily conclusive that the Claimant was an employee.

The Tribunal judgment stated:- *“It is far from unusual to find contractors, consultants or others who are **not** [our emphasis] employees engaged in management functions of many organisations and employers.”*

On the facts, the Respondent did not have to offer work, any more than the Claimant was obliged to accept it. Since he was unable to establish he was under sufficient control such that he was a servant or employee of the Respondent, his claims failed.

Had this case been a ‘worker’ case – a claim for holiday pay – it is likely that the Claimant would have succeeded on the facts. The Claimant was paid holiday pay in this case. But, that is why it is critical to ensure the contract reflects reality. Foremen and managers do not necessarily have to ‘go on the books’, provided the employment status issue is considered and the intention of the parties recorded in writing.

