

One of our clients received a claim of unfair dismissal, non-payment of redundancy pay, non-payment of holiday pay and a complaint relating to other amounts relating to expenses from a former subcontractor that it had engaged from 1994 to February 2005.

Accountax on behalf of the Respondent defended the claim on two fronts:

1. That the Claimant was out of time and that it was reasonably practicable for the claim to be brought within time and,
2. That the Claimant was not an employee or a worker of the Respondent.

Accountax took over the case after the initial response (ET3) to the claim was filed. The Tribunal listed a pre-hearing review to determine the jurisdictional matters namely, whether the Claimant was an employee, whether the Claimant was out of time and whether it was reasonably practicable for the claim to be made in time.

Facts:

There was no written contract between the parties from 1994 to December 2004 at which point the Claimant and Respondent agreed and signed a contract for services. If the Claimant did not work then he was not paid. The claimant was engaged by the CIS tax scheme which meant the Respondent deducted 18% tax at source but the Respondent was responsible for his own National Insurance contributions.

In 2004 the Claimant received a letter from the Inland Revenue stating that he should be classified as an employee. In February 2005 when the Claimant was no longer engaged by the Respondent the Claimant approached the Revenue and asked them to review his working arrangements to see if he was an employee. The Revenue looked at the matter 'in detail' and decided that the Claimant should be classified as an employee. This prompted the Claimant to file a claim for the numerous employment rights listed earlier.

The Tribunal:

The Tribunal found that the Claimant was not an employee and therefore not entitled to bring a claim for unfair dismissal or redundancy. The Tribunal also found that the Claimant was out of time to bring a claim and therefore the claim for holiday pay was barred.

The Tribunal was satisfied that the written contract was the true agreement between the parties and placed significant weight on the absence of mutuality of obligations. The Claimant was not obliged to do any work and the respondent was not obliged to provide any work. The Tribunal also stressed that *"All the tests for employment pointed away from an employment relationship"*.

Regarding the out of time issue the Tribunal held that it was reasonably practicable for the claims to be made in time and that the Claimants claims fail on that ground as well. The Tribunal could find no reason why the claims could not have been made in time given the fact that the Claimant had been quite vigorous in his pursuit of the claims given the fact that he contacted both the Inland Revenue and the citizens Advice Bureau.

All claims were dismissed. Two facts are of particular interest in this case. The first, is that the Claimant had been engaged for a period in excess of 10 years which dismisses the Revenue myth that length of service is crucial in determining status and secondly that after a detailed examination by the Revenue and their 'Employment Status Indicator Tool' the Claimant was advised that he was an employee. Thankfully the Tribunal listened to the facts and followed established case law.