

## Self-employed subbies claim protective award and notice pay!

One of our clients which is a commercial contractor found itself joined in proceedings against their client (the main contractor) by the GMB Union and **80 claimants** for a protective award of 90 days' pay for failure to properly consult in a collective redundancy situation or give proper notice to terminate employment, when a large construction project ended.

When the claims were brought against our client in the alternative, a pre-hearing review had already taken place, which had muddied the waters considerably. All the claimants were engaged by our client as self-employed operatives and had CIS4 cards. The First Respondent had argued they was no contractual relationship, or facts to imply an employment relationship with them, but put forward arguments they were fixed term workers at best, in the event the tribunal found there was one. This was to get round the argument that there had been a dismissal, given that if a fixed term contract comes to an end, there can be no dismissal – by reason of redundancy or for any other. Oh dear!

When we got involved, we were able to agree with the First Respondent to stick to the facts. The claimants had a Contract for Services with our client. Under no circumstances were they employees at all. The fixed term contract idea was a red herring, since there was no employer and the Union was not recognised by either party.

The three claimants who gave evidence argued that they had been rushed to sign their self-employed contracts and had had no opportunity to read the terms.

The Tribunal found:-

1. The Claimants were self-employed;
2. The Claimants did not qualify to claim protective awards or pay in lieu of notice.

On the facts, the Tribunal rejected the arguments put forward that they were not bound by the Contract for Services which they signed. The facts that they wore the First Respondent's clothing and carried their security passes were insufficient to claim employment status and it was accepted that the reason for wearing them was a health and safety reason. If they felt rushed, they had enough time to establish that the contract was with the Second Respondent and it was NOT a contract of employment and were bound by it whether or not they read it. Furthermore, they had worked under CIS4 contracts for some years, so were familiar with the nature of a CIS4 contract.

The Tribunal accepted that 'assessment' of work did not signify employment or control and rejected the argument that the claimants were integrated into the workforce because they worked in a team with 40 others.

Neither did the fact that tools were supplied by the First Respondent persuade the Tribunal that they were employed by that party. The Tribunal accepted that the only contractual relationship which the claimants had was with the Second Respondent (our client) and they were self-employed.

Thank goodness for written contracts.