

More bad news for companies using agency staff!

The recent case of Royal National Lifeboat Institution v Bushaway signals the continuing movement towards finding a contract of employment between a worker supplied by an agency and the end-user to whom that worker is supplied. The case has reaffirmed the approach taken by the Court of Appeal in Dacas v Brook Street Bureau (UK) Ltd.

The facts in this case were as follows. Ms Bushaway had been working for RNLI as an agency worker in a temporary position until that post became permanent. She was then appointed as a permanent member of staff. Sometime later she resigned and claimed constructive unfair dismissal against RNLI. The tribunal had to decide whether Ms Bushaway had been employed by RNLI before she became a permanent employee in order to determine whether or not she had the requisite 1 year's continuous employment to allow her to bring a claim of unfair dismissal. There was a contract between RNLI and the Agency and a contract between Ms Bushaway and the agency that supplied Ms Bushaway but no express contract between Ms Bushaway and RNLI.

The tribunal concluded that it had to look not only at the written contracts in place between the parties, but also at the parties' conduct and how the arrangement operated in practice. Although the contracts between the agency and RNLI and the agency and Ms Bushaway specified that she was not to be considered an employee of RNLI, and that she was a "self-employed temp", the Employment Tribunal held that RNLI had exercised sufficient control over Ms Bushaway for there to be an employment contract between the two. The fact that Ms Bushaway worked regular hours, 5 days a week under a line manager with whom she had to negotiate requests for time off was fundamental to the Tribunal's decision.

The RNLI appealed to the Employment Appeal Tribunal ("EAT") but its appeal was dismissed. The EAT found the tribunal was entitled to look beyond the written contracts and to conclude that Ms Bushaway was RNLI's employee. A Court would have to 'look behind [the contract]' when it was clear that the written contract did not represent the complete arrangement between the parties

Employers will have to consider carefully the impact this decision will have on their wish to use temporary members of staff supplied by a agencies. This case highlights the difficulties that employers face when trying to avoid giving employment rights to agency workers. Although contractual documents can assist they cannot be relied upon where they do not reflect the complete arrangement between the parties.

There are effective practical steps that employers can take to try to avoid employment rights being inadvertently created and if you would like any more information on this or any other employment related issue please contact Sejal Raja on 020 7227 7410 or by email at sejal.raja@rlb-law.com or contact Rebecca Watson on 020 7227 6714 or by email at rebecca.watson@rlb-law.com

Please also note that there are limited spaces left for our "Whistleblowing Workshop" on 8th September 2005. Please contact Julia Worton at julia.worton@rlb-law.com for more information.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

EMPLOYMENT

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