



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent(s)**

**Mr K Shahid**

**v**

**Biosite Systems Limited**

**Heard at:** London Central Employment Tribunal    **On:** 8 February 2018

**Before:** Employment Judge Davidson

## **Representation**

**For the Claimant:**            in person

**For the Respondent:**        Mr J McHugh, Operations Manager

## **JUDGMENT FOLLOWING A PRELIMINARY HEARING**

1. This preliminary hearing was listed following a preliminary hearing (case management) before Employment Judge Lewis held on 13 December 2017. She determined that the issues for this hearing were
  - a. whether the claimant was employed as an employee or a worker by the respondent (Biosite) at any stage and, if so, from when to when. Alternatively was he self-employed for any periods?
  - b. If the tribunal decides the claimant was employed as an employee or worker by Biosite up till when RACS took over, but not after that date, are the claims against Biosite out of time?
2. The tribunal heard evidence from the claimant on his own behalf and from Jake McHugh (Operations Manager) and Simon Oakley (Operations Director) on behalf of the respondent. In addition, there was a bundle of documents before the tribunal.

3. I find that the claimant was taken on by the respondent as a security guard in April 2015. I find that the parties came to an arrangement where the claimant would be treated as self-employed and would submit invoices. The documentation is somewhat contradictory in that the claimant sent back a signed PAYE employment contract but this was not implemented and he subsequently submitted invoices and was paid gross. I find therefore that he never joined the PAYE system and was treated as self-employed.
4. I find that he had other employment but that this did not make the respondent and the other employer the claimant's clients and I find that he was not in business on his own account.
5. The claimant was generally given the same shift patters from week to week. The respondent asserts he had the right to substitute his labour, provided the substitute held the appropriate qualifications. Although others in the same position as the claimant did substitute their labour, the claimant never did so himself and there is no evidence that he was aware of this right.
6. He was entitled to make himself unavailable for shifts and was not subject to disciplinary action. The respondent provided him with uniform and he was managed by the client's site manager.
7. In late 2015, due to proposed legislative changes, the respondent decided that it was no longer able to facilitate self-employment and all the self-employed guards were taken on by RACS, who became their employer (providing their services to the respondent and/or other clients) and they were paid through PAYE and received holiday pay and other employment benefits.
8. Approximately 25 people moved to RACS in October 2015. The claimant was the only person who did not. He accepts that he was informed of the change and given an opportunity to query it or to raise any concerns but he chose not to do so because he needed the money from the job and was not in a position to jeopardise this. He eventually moved to RACS in January 2016.
9. The first issue is whether the relationship was genuinely a self-employed relationship or whether the claimant was an employee or a worker in the period from April 2015 to January 2016. I find that he was not an employee but a worker. I find that he was required to perform personal services but did not have employment status.
10. The second issue is whether the claimant was employed by RACS or the respondent in the period from January 2016 until his resignation in August 2017. The claimant accepts that RACS paid him but maintains that they did so as agent for the respondent, who was the true employer.

11. Taking into account the documentation which shows that the claimant signed an employment contract with RACS and that they dealt with the claimant's immigration status, I find that the claimant was employed by RACS. The fact that the claimant decided to sign the contract because he needed the money from the job does not mean that the terms have not been agreed by him. It was his choice to agree to those terms.
12. In any event, he continued to work under the arrangement with RACS for a year and a half without complaining.
13. In conclusion, I find that the claimant was a worker of the respondent from April to December 2015 and an employee of RACS from January 2016 to August 2017.
14. I find that the claimant's complaints of unpaid holiday pay and deductions from wages against the respondent are out of time as the last pay period for which the respondent was responsible was in December 2015, or at the latest, January 2016. Such claims must be brought within three months.
15. I therefore find that the tribunal does not have jurisdiction to hear the claimant's claims.

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Employment Judge Davidson on 8  
February 2018