SQUIRE PATTON BOGGS

Pimlico Plumbers Case
UK Supreme Court's Decision

The UK Supreme Court, on 13 June, has given its judgment in the highly publicised case of *Pimlico Plumbers Limited & anor v Smith*. It has confirmed that Mr Smith was a worker during the period he worked for Pimlico Plumbers (PP) and was not genuinely self-employed.

Background to the Appeal

Mr Smith is a plumber. He carried out work for PP between August 2005 and April 2011. He claimed that, following a heart attack in January 2011, he was unfairly and wrongfully dismissed. He also brought claims for holiday pay, unlawful deductions from wages and disability discrimination.

The Employment Tribunal decided that Mr Smith had not been an employee for the purposes of his unfair dismissal claim, but that he had been a worker for the purposes of his holiday pay and unlawful deductions from wages claim. Furthermore, he had been "in employment" for the purposes of his disability discrimination claims. PP appealed this decision to the Employment Appeal Tribunal, the Court of Appeal and finally to the Supreme Court.

In a final blow to PP, the Supreme Court has unanimously dismissed its appeal, ruling that the Tribunal was entitled to conclude that Mr Smith was a worker under section 230(3)(b) of the Employment Rights Act 1996 (and the relevant provisions of the Working Time Regulations 1998 and the Equality Act 2010) and he could, therefore, proceed with the claims that arose under this legislation.

Reasons for the Supreme Court's Judgment

In order to qualify as a worker under the Employment Rights Act 1996, Mr Smith must have undertaken to perform his work or services for PP personally and PP must not have been a client or customer of his.

In considering whether Mr Smith was required to perform his work personally, the Supreme Court noted that his agreements with PP gave him no express right to appoint a substitute to do his work. He did, however, have a limited ability in practice (not found in the written agreements) to appoint another PP operative to do jobs for him. The Supreme Court said that this limited ability to appoint a substitute did not change the fact that the "dominant feature" of the arrangement remained personal performance by Mr Smith.

Furthermore, the terms of the written agreements (which used language such as "your skills", etc.) were clearly directed to Mr Smith performing the work personally and any right to provide a substitute was limited by the fact that he/she had to be another PP operative.

On the issue of whether PP was a client or customer of Mr Smith's, the Supreme Court said that the Tribunal was entitled to find that PP was not a customer or client. It accepted that there were some factors that pointed towards self-employment (e.g. Mr Smith was entitled to reject particular offers of work, he was free to accept other work if no work was offered by PP and he bore some financial risk), but these were outweighed by other factors that "betrayed a grip on his economy inconsistent with his being a truly independent contractor". These other factors included the fact that PP exercised tight control over Mr Smith's attire (he had to wear the branded uniform and drive the branded vehicle), the severe terms as to when and how much it was obliged to pay him and the restrictive covenants curtailing his activities following termination. The agreement also made reference to "wages", "gross misconduct" and "dismissal", being concepts not at ease in genuine business-to-business agreements.

What Does This Case Mean for Employers?

This case might be the end of the road for PP's particular engagement model, but this decision is very much limited to the facts of this particular case and it does not take us much further forward in terms of grappling with the complicated issue of someone's employment status.

If you would like to discuss this decision in more detail, please speak to your usual contact in the Labour & Employment team.

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