

UK Supreme Court confirms worker rights for “contractor” plumber

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In *Pimlico Plumbers Limited and another v Smith*, the Supreme Court has confirmed that the Employment Tribunal was entitled to conclude that Gary Smith, who worked under a contract that described him as an independent contractor, was a “worker” within the meaning of the Employment Rights Act 1996, the Working Time Regulations 1998, and the Equality Act 2010.

Smith worked for Pimlico Plumbers Ltd. as a plumber for almost six years. Following the termination of his agreement with the company, he issued several proceedings with the Employment Tribunal. Smith claimed, among other things, that he had been discriminated against following the rejection of his request to reduce his hours after he had a heart attack. The Employment Tribunal found that he was a “worker,” which entitled him to basic employment rights. The findings meant that Smith could proceed with his complaints, and directions were made for their consideration at a later date.

Pimlico Plumbers appealed this decision to the Employment Appeal Tribunal, then to the [Court of Appeal](#), but were unsuccessful. They then appealed to the Supreme Court.

Personal Performance and the Right to Substitute

The dominant feature in this case was the significance of Smith’s right to substitute. For Smith to qualify as a worker, it was necessary for him to have undertaken to personally perform his work or services for Pimlico.

The Supreme Court agreed with the Employment Tribunal’s finding that the dominant feature of Smith’s contractual relationship with Pimlico was an obligation of personal performance. Although he had the ability to substitute with another of Pimlico’s plumbers, i.e., someone bound by the same obligations to which he was subject, he did not have the right to substitute at his discretion. Therefore, the Court agreed that Smith was required to provide personal service, contrasting the facts of the case with a situation in which another party is interested in the work being done and not the identity of the substitute. According to the Court, Smith would fall under the definition of a worker in the relevant legislation unless it could be demonstrated that Pimlico was a client or customer of his.

Client or Customer?

Smith was able to reject work and was able to accept outside work if none of the company's clients offered him work. He also bore some of the financial risk of the work he produced and the manner in which he undertook his work was not supervised. However, these points did not override the facts that were presented showing that Pimlico was not a client or customer. These included the requirement for Smith to wear a branded uniform, carry an identity card, and drive a branded van. In addition, Pimlico had control over the administrative aspects of any job Smith undertook as well as when and how much he was paid. The post-termination restrictive covenants within his contract, which also contained references to "wages," "gross misconduct" and "dismissal," also pointed to his not being an independent contractor.

Unanimously dismissing the appeal, the Supreme Court held that it was reasonable for the Employment Tribunal to conclude that Smith was a worker and that Pimlico could not be regarded as a client or a customer, with the relationship of subordination being a key factor in that decision.

Key Takeaways

The Court's judgment adds to the increasing case law on employment status. It also demonstrates, once again, that where there is a clear relationship of subordination, the courts are inclined to make a finding that employment rights exist regardless of the presence or absence of terms or factors that may point to an independent contractor arrangement.

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