



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 16/9/2022

Claimant: Ms V Morjaria

Respondent: Handle Recruitment Ltd

Before: Employment Judge Mr J S Burns
Members: Ms G Carpenter and Mr T Ashby

Representation

Claimant: In person

Respondent: Ms Dadswell (operations director)

JUDGMENT

The claim is dismissed

REASONS

1. This was a claim under Regulations 5 and 18 Agency Workers Regulations 2010.
2. We heard evidence from the Claimant and Ms Dadswell and were referred to a bundle of documents and to a schedule and counter-schedule.
3. The Claimant was engaged by the Respondent, a temporary work agency, to work at the BBC as a team assistant. He worked for a month ending in mid-July 2019 then started again on 3/9/2019 until 7/5/2020 when he was furloughed. As he is able to count the initial one-month period of work as part of the 12-week qualifying period, the qualifying period ended on 2/11/2019. His claim is based on the period 3/11/2019 to 7/5/2020.
4. As an agency worker, he was paid £16 per hour plus he was entitled to take paid holiday or be paid out in lieu for 28 days holiday per year which included 8 Bank holiday days. Holidays accrued at the rate of 12.07% ie £1.93 per hour worked which gave a total remuneration of £17.93 per hour. By the time he left he had an un-used accrual of £2552.96 which was paid out to him on leaving on 22/5/2020.
5. The Claimant suggested that had he been hired directly by the BBC, he would have been paid at least £33363 (including London weighting of £4862) and would have been entitled to 34 days holidays including bank holidays and a corporation day. These figures are based on a job offer made to him by the BBC on 19/12/2019 for a team assistant, BBC News Development, in a different team on a 12 month contract. The Claimant did not accept that offer because it would not have offered him the flexibility he wanted at that time in order to pursue other career options. We are unwilling to accept the offer as a reliable indication of the relevant information because it did not related to the same role in which he worked as an agency worker.
6. The Respondent did not deal with the BBC directly but through a third party Reed Consulting. When this dispute arose Ms Dadswell asked Reed to find out what the Claimant would have been paid had he been hired directly by the BBC to do the team assistant role he was engaged in as an agency worker. That information was provided by Reed to the effect that the equivalent

salary would have been £24485.27 pa for a 35 hour a week role including 34 days holiday, and that the hourly rate equivalent was £13.81 per hour. To this, for purposes of comparison, the Respondent added 15.04% ie £2.08 per hour worked for the 34 days paid holiday (including bank holidays and a corporation day which the BBC allows its own employees) to give a total remuneration rate of £15.89 per hour.

7. The Reed information refers to the position as being London-based but does not state expressly whether or not London weighting is included, which caused us some hesitation. However, we concluded that adding on to the Reed figures a notional London weighting based purely on speculation that the Reed figures did not include it, would be inappropriate.
8. The onus of proof is on the Claimant. On the available information and the best evidence and having taken the different holiday entitlements into account, he was paid as an agency worker a higher total hourly rate namely £17.93 than he would have received as a direct hire namely £15.89.
9. Hence we cannot find that there has been any breach of the AWR 2010.
10. We have some sympathy for the Claimant and can well understand how he was unclear about this. The Respondent's explanations to the Claimant at the time were unclear. A good example of this is at 155 of the bundle which is an email dated 3/3/2020 from Ms Dowell to the Claimant which is unclear and misleading.

J S Burns Employment Judge
London Central
16/09/2022
For Secretary of the Tribunals
Date sent to parties : 16/09/2022
