

Synopsis EAT Case

This briefing note sets out a synopsis of the Employment Appeal Tribunal judgement of T Singh vs. The Members of the Management Committee of the Bristol Sikh Temple and Others (February 2012).

The full judgement has also been forwarded for ease.

The issue was whether the Priest/Granthi at a Sikh Temple/Gurdwara was a 'worker' as defined by the National Minimum Wage Act 1998. Please note that the definition is the same as the Working Time Regulations 1998 and whilst this was not considered as part of this appeal it is likely to have implications for future cases. Those who are defined as workers in line with the National Minimum Wage Act will also be considered workers for the Working Time Regulations 1998.

The key part of the Minimum Wage Act in this case is section 54 (3) (b) which defines a worker and more specifically it is as follows:

“any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;”

In essence what this says is that anyone who has a contract (whether it is written, an oral contract or simply implied) who is personally obliged to perform services for someone who is not a client or customer of a business is a worker for the purposes of the act and therefore will enjoy the benefits of a minimum wage.

There are a number of key points to note when determining if someone is a worker:

- Firstly it is necessary to establish whether the parties had an intention to form a contract. This does not need to meet the same stringent tests as a written statement of employment particulars. It is enough that a series of actions gives rise to the implication that a contract is in place.

- Then it is necessary to consider whether there is a mutuality of obligation, the test for this is that some consideration is provided for services provided (and this doesn't necessarily have to be pay).
- It is also necessary to have an undertaking to 'perform personally any work or services'.

In this particular case there were a number of actions which led the EAT to believe that Mr T. Singh was a worker rather than a volunteer:

- The appellant was provided with free accommodation and there was no explanation as to why this should be viewed as facilities to a valued officer-bearer in order to allow him to perform his religious duties as opposed to remuneration
- The appellant received cash payments made up of voluntary donations of approximately £50 per week. The Management Committee argued that this was due to his valued role as an office bearer but it was noted that he was not paid this when he was on holiday
- His duties were set out in the constitution and all of the Executive Committee were described as volunteers, the post of Granthi however was not listed as part of the Executive Committee and instead was listed under 'duties of office-bearers'. There was nothing to describe this role as voluntary within the Constitution itself
- Duties were described for the Granthi and these included being in the Gurdwara at certain times of the day when he 'must be' there, it also said that the Granthi 'should take responsibility for the cleaning and general care' of the Gurdwara. The EAT believed that there was no evidence or finding that Mr T. Singh enjoyed an unfettered right not to perform any work for the management committee when he was available. This was of particular importance.
- Mr T. Singh took extended holidays regularly and was not obliged to have leave approved however that did not mean that he did not owe a personal obligation to serve the Gurdwara when he was available
- In terms of the intention to form a contract it should be noted that it is rarely possible to rely on religious beliefs alone as it is described that the situation in which a finding of a contract or a contract of employment would offend a religious belief as an 'exceptional

situation.’ In this case despite there clearly being some traditional Temple’s which rely on a culture of volunteerism and arguably this Temple was one such Temple, there were other Sikh Temple’s at which Granthi’s were paid and therefore it was argued that in this case that the religious belief of volunteerism alone could not be used to negate any intention to form a contract.

Learning from the case

It is important that it is clear from the outset that there is no intention to form a contract and that the post/duties are entirely voluntary. In order to demonstrate that this is the case someone should have an unfettered right to refuse to do the work, they should not be obliged to do it personally at any time in an ideal situation but certainly not for any prolonged length of time. Anything which can be seen to be remuneration should be shown to be required in order for the person to perform these duties rather than simply be seen as pay.

Anything set out in writing should clearly support the above position if duties are indeed voluntary.

Conclusion

This is part of a series of cases where Employment Tribunals are finding those who perform religious duties to be workers and it appears that with this case it will become more difficult for religious institutions to sit outside of the Minimum Wage Act 1998 and the Working Time Regulations 1998.