



**Pictured left:**

Jay Bhayani, Partner  
Employment Law, Watson Esam Solicitors

Photos available to be sent by Email

## **Sub-contractors holiday pay claim dismissed by Tribunal**

A claim commenced by 3 bricklayers against Sheaf Brickwork Limited of Sheffield was dismissed by the Employment Tribunal in Hull. The gang of 3 carried out work on various building sites having been introduced by Sheaf Brickwork.

The bricklayers each held a CIS card and worked under the usual construction industry rules being responsible for their own tax and National Insurance and with a flat rate deduction of 18% by Sheaf Brickwork with whom they had all signed a Contract of Services.

When they ended their working relationship with Sheaf Brickwork, of their own free will and giving no notice, they made a claim under the Working Time Regulations 1998 for unpaid holiday pay.

The Tribunal Chairman, Mr Simpson decided on the evidence that the bricklayers were neither employees nor workers. Having considered the well known cases of Byrne Brothers and the most recent cases of Redrow Homes (Yorkshire) Ltd –v- Wright (2004) and Firthglow Ltd –v- Descombes (2004) the Tribunal decided that the differentiating factor in this case was a clear Contract for Services which stipulated that the sub-contractors could send a substitute worker of equal trade qualification, at his discretion to undertake the work. This meant that there was no mutuality of obligation on either side and no requirement that the contractor had to carry out the work personally.

Sheaf Brickworks solicitor, Jay Bhayani of Watson Esam commented ‘this decision came as a great relief to my clients. They take on a substantial number of sub-contractors and whilst they firmly believe that all parties understand that there is no entitlement to holiday pay many sub-contractors are submitting claims to the Tribunal after the working relationship has terminated. There is a general misconception that every sub-contractor is a protected worker within the regulations. There has to be a distinction for self-employed sub-contractors in the construction industry depending on the terms and conditions under which they carry out their work. This case demonstrates that the Tribunal has the power to consider each case on its own facts. Hopefully, this will mean that other companies in similar circumstances to Sheaf Brickwork will challenge claims commenced by self-employed contractors. My hope is for some clarity and consistency on the issue.’

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