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Courier's tribunal win against CitySprint

An employment tribunal has found that a CitySprint bicycle courier should be classed as a worker, rather than self-employed.

The tribunal claim was for two days' unpaid holiday pay, but the real argument was whether couriers should be classified as "independent contractors", or "workers" in the eyes of UK and EU law.

Earlier this month, the tribunal found that Maggie Dewhurst was entitled to basic employment rights such as holiday pay, sick pay and the National Living Wage.

Jon Katona, vice-president of the non-TUC affiliated Independent Workers' Union of Great Britain, himself a CitySprint courier who supported Maggie's claim as a witness in the tribunal, said: "This is a huge victory for couriers, and workers everywhere who have been asked to sign their rights away for a job.

"And it's a warning to other companies that masquerading as a non-employer, or as a go-between for independent businessmen is over. You're going to have to give your workforce the rights and protections owed to them according to the true working relationship, or we will come after you."

Dewhurst has worked for CitySprint for the past two years, during which time she has been classed as an independent contractor, despite her role being more like that of a worker.

Tribunal judge Joanna Wade called CitySprint's contractual arrangements "contorted", "indecipherable" and "window dressing".

She added: "It is CitySprint which has the power to regulate the amount of work available, and it keeps its couriers busy by limiting the size of the fleet.

"This gets to the heart of the inequality of bargaining power present in this relationship, and shows that this is not a commercial venture between two corporate entities, as claimed by CitySprint."

The case echoes a recent "gig economy" case against taxi firm Uber, which took place in October last year. The tribunal found that Uber drivers should be classed as workers and therefore eligible for basic employment rights. The company intends to appeal.

A number of legal challenges with courier firms, including Addison Lee, Excel and eCourier, are still outstanding.

A whinging CitySprint said: "This case has demonstrated that there is still widespread confusion regarding this area of law, which is why we are calling on the government to provide better support

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and help for businesses across the UK who could be similarly affected."

The firm has not confirmed whether or not it will appeal the decision, but said it was reviewing the ruling "in detail".

At present, Matthew Taylor, chief executive of the Royal Society of the Arts, is heading a government review to consider how employment practices need to change in order to keep pace with modern business models. The review is considering the implications of new forms of work, driven by digital platforms, for employee rights and responsibilities, employer freedoms and obligations, and the existing regulatory framework surrounding employment.

<https://iwgb.org.uk/2017/01/08/citysprint-courier-tribunal-victory/>
www.personneltoday.com/hr/citysprint-courier-classed-worker-says-tribunal/
www.gov.uk/government/groups/employment-practices-in-the-modern-economy

TUC warns over Brexit threat to workers' rights

At the end of last year the TUC called on the prime minister Theresa May to make clear to Britain's bosses that any watering down of workers' rights following Brexit is off the table.

The TUC call followed the emergence of a letter sent to MPs by Simon Boyd, the managing director of John Reid & Sons (Structsteel) Limited, which highlights the directives and regulations that have come about as a result of our membership of the EU beneficial to workers. The letter covers issues such as working time, employment law and health and safety regulation.

The letter shows that the Brexit vote was seen as a means to an end for scrapping workers' rights by some of the bosses who campaigned to leave the EU, said the TUC.

TUC general secretary Frances O'Grady said: "The Leave campaign promised people more control over their lives. But now bad bosses are trying to hijack Brexit to let them walk all over working people. No-one voted to leave to lose vital protections like safe working hours and fair holiday pay.

"The prime minister promised working people that all rights and protections that come from the EU will be safe when Britain leaves. She must stand firm now, and guarantee that the UK will respect all existing rights at work. And she must go further and

promise Britain's workers that her government will mirror all new protections for workers in the rest of Europe while the UK is negotiating to leave the EU."

Records at Companies House show that John Reid & Sons (Structsteel) Limited made a political donation of £8,000 in the year to March 2016 to the Leave campaign group Business for Britain EU Referendum Team. The firm has been a regular donor to the UK Independence Party (UKIP). It gave £6,000 in year to March 2015, £13,000 in the year to March 2010 and £2,000 in the year to March 2008.

Another director of the firm – Rollo Reid – is a UKIP activist in the Christchurch area, where the firm is located.

www.tuc.org.uk/node/126157

<http://2mbg6f6b1kl380gtk22pbxgw.wpengine.netdna-cdn.com/wp-content/uploads/2016/12/What-has-Membership-of-the-EU-done-for-Us.pdf>

Lame excuses for not paying minimum wage

Ten of the worst excuses given by unscrupulous bosses found to have underpaid workers the National Minimum Wage have been revealed by the government.

Excuses for not paying staff the minimum wage include only wanting to pay staff when there were customers to be served and believing it was acceptable to underpay workers until they had "proved" themselves.

The list was published to coincide with a new awareness campaign to encourage workers to check their pay to ensure they are receiving at least the statutory minimum ahead of the National Minimum Wage and National Living Wage rising on 1 April 2017.

The £1.7 million campaign aims to make sure workers are being paid at least the statutory minimum wage, depending on their age, and is part of the government's commitment to making sure the economy works for all.

Investigators from HM Revenue and Customs (HMRC) said some of the other excuses given to them by employers caught out for underpaying staff included:

- the employee wasn't a good worker so I didn't think they deserved to be paid the National Minimum Wage;
- I thought it was OK to pay foreign workers below the National Minimum Wage as they aren't British

and therefore don't have the right to be paid it;

- she doesn't deserve the National Minimum Wage because she only makes the teas and sweeps the floors;
- my employee is still learning so they aren't entitled to the National Minimum Wage
- I've got an agreement with my workers that I won't pay them the National Minimum Wage; they understand and they even signed a contract to this effect; and
- the National Minimum Wage doesn't apply to my business.

However, HMRC's role in policing failure to pay the minimum wage has been criticised by Roger Lilley, one of two newspaper delivery workers who received the biggest payout yet for breaches by Midcounties Co-op.

"Our case took over 300 days to resolve," he said. "Our evidence did not carry nearly as much weight as the employer. HMRC were not at all on our side."

Lilley has written to the business secretary, Greg Clarke, to complain about "yawning gaps of non-disclosure" in the investigative process and a lack of information about how the repayment had been calculated between the employer and HMRC.

www.gov.uk/government/news/revealed-most-bizarre-excuses-for-underpaying-staff-the-national-minimum-wage

www.theguardian.com/society/2017/jan/11/uk-minimum-wage-ad-campaign-hmrc

High street store fined over safety

National chain store Wilko has been fined £2.2 million after a worker was crushed and left paralysed just over a year after it was fined over the death of a worker.

Corisande Collins, 23, had just completed the first year of a degree at Northampton University and had taken work at the Beaumont Shopping Centre branch, Leicester in 2013. She was pulling a roll cage overloaded with 507lb of paint out of a lift when it toppled on her, the court heard.

The prosecution described it as a "high culpability case" as there was no risk assessment for the lift or the use of the roll cages, as well as "inadequate training and supervision".

Health and safety inspectors said they were "shocked" by practices at the store, adding "the systems were unsafe".

Last January Wilko was ordered to pay almost £400,000 in fines and costs after an employee was killed when he was crushed between two forklift trucks at its Worksop distribution centre.

George Hancock died from injuries sustained when a large diesel-powered truck knocked over the smaller electrically-powered truck he was operating. He was not wearing a seatbelt. An inquest jury at Nottingham Coroner's Court in December 2013 recorded a verdict of accidental death.

Bassetlaw District Council prosecuted the firm after investigating the December 2011 incident.

Judge Sampson said there was no proper monitoring of truck movements and "this was an accident waiting to happen".

www.bbc.co.uk/news/uk-england-leicestershire-38584045

www.healthandsafetyatwork.com/workplace-transport/wilko-george-hancock

www.gainsboroughstandard.co.uk/news/wilko-driver-s-death-at-worksop-depot-was-accident-waiting-to-happen-1-7673785

Manufacturing output edges higher

Factory output increased by 0.3% in the three months to November compared with the previous three months. That was, the first time in four months that output has increased.

In the November period, there were increases in output of 4.1% in coke and petroleum products, 3.6% in pharmaceuticals and 3.0% in electrical equipment.

Output was down by 1.3% in textiles and clothing in the three-month-period.

Manufacturing output was 0.3% higher than the same period a year ago, the Office for National Statistics (ONS) said.

The more volatile monthly figure showed output in November was up by 1.3% on the previous month and 1.2% up on November 2015.

In November, output of the production industries – manufacturing, mining and utilities – was 0.6% down on the previous three-month period, but 0.5% higher than the same period a year ago.

The more volatile monthly figure showed industrial production in November was up by 2.1% on the previous month and 2.0% on November 2015.

In the three months to November 2016, production and manufacturing were 8.4% and 5.4% respectively below the pre-downturn gross domestic product (GDP) peak reached in the first quarter of 2008.

www.ons.gov.uk/economy/economicoutputandproductivity/output/bulletins/indexof-production/nov2016

Child poverty briefing

A useful guide to child poverty was produced by the House of Commons Library just before the topic was debated in parliament in mid-December 2016.

The research briefing provides figures on the number in children in low-income households since 1994-95.

The figures are shown for two measures:

- relative low income (or relative poverty) where an individual is living in a household with income below 60% of median household income;
- absolute low income (or absolute poverty) where an individual is living in a household with income below 60% of the 2010-11 median, uprated for (RPI) inflation.

In simple terms, the relative low income measure offers an indicator of inequality between low- and middle-income households. The absolute low income measure offers an indicator of the extent to which living standards of low-income households are improving over time.

However, income will not always reflect the extent to which a family can afford necessities. Therefore a low income threshold may be combined with some assessment of whether households are able to access key goods and services for a measure of low income and material deprivation.

Income can be measured before or after housing costs have been deducted (BHC or AHC) and both approaches are commonly used. Poverty levels are generally higher when household incomes are measured AHC, as households at the lower end of the income distribution tend to spend a larger share of their income on housing than higher-income households.

The latest estimates are that there were 2.5 million children were in relative poverty before housing costs (BHC) in 2014-15 – that was 200,000 more than the previous year. That equates to almost one in five (19%) of children being in relative poverty BHC.

The number of children in absolute poverty BHC was 2.3 million, about the same as the previous year. So just around one in six (17%) of children were in absolute poverty BHC.

On an after housing costs (AHC) basis, there were 3.9 million children in relative poverty, 200,000 more than the previous year. Well over a quarter (29%) of all children were in relative poverty AHC.

The number of children in absolute poverty AHC fell by 100,000 to 3.7 million, so just over a quarter (27%) of all children in the UK were in absolute poverty AHC.

The figures and percentages have thankfully come down since 1994-95. However, matters have worsened or show no change since the 2010 general election and the Conservative-Liberal coalition.

For example, in 2010-11 the number of children in relative poverty BHC was 2,000 lower than the latest figure and 3,000 lower AHC.

<http://researchbriefings.files.parliament.uk/documents/CDP-2016-0256/CDP-2016-0256.pdf>

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