

## Contractors inside IR35 may be able to claim employment rights after landmark ruling

Some contractors within [IR35](#) might be able to claim employment rights from their 'client', following a landmark ruling this week.

An Employment Tribunal has found that contractor Andrew Tilson was an employee of Alstom Transport, despite billing on an hourly basis through his own [contractor limited company](#) and working through an agency.

And his solicitor Cyril Dennemont, Partner and Head of Employment Law at Harold Benjamin, has told ContractorCalculator that he believes this is the first ruling of its kind since [James v Greenwich](#). He believes it could see other contractors claiming employment rights as a result.

"The guidelines on employee status that arose following the James v Greenwich Borough Council ruling were followed in this case," explains Dennemont, "and we believe that this is the first ruling since where a contractor has been found to have employment rights."

### Contract was 'a sham'

Dennemont continues: "Even though the contractor had a contract with an agency and was paid by the hour by a separate payroll company, the Judge found that there was overwhelming evidence that the relationship was one of employment, and the written contract was found to be a sham."

The contractor, Tilson, joined rail infrastructure and engineering firm Alstom in August 2004 and worked there full time in a management capacity and without a break until his contract was terminated, with no explanation and just one week's notice, in November 2006.

As a result of the ruling, Tilson can claim unfair dismissal from his position with Alstom, which could pave the way for a host of future cases where long-term contractors can claim employment rights.

### Employee rights for contractors within IR35?

The contracting sector thought that the case for contractor employment rights had been closed by the James v Greenwich ruling, but for some contractors trapped within IR35, this ruling could change everything.

"It highlights that where contractors have virtually identical roles and responsibilities to permanent employees and the only distinction is the way that they are paid, they can still qualify for employee status," says Dennemont.

"And once a contractor is awarded employee status," he continues, "they can enjoy all the benefits that come with such status, such as bonuses, pensions, maternity and paternity rights and holiday pay – everything a permanent employee is entitled to."

### Fully integrated into the company

"Despite his contractor status, Tilson was fully integrated into Alstom's operations," says Dennemont, "and was distinguished from permanent employees only by the way in which he was paid." In fact, Tilson was such a part and parcel of Alstom that he:

- Had a line manager he was directly answerable to
- Directly managed a number of permanent Alstom employees
- Worked regular hours on site Monday to Friday, with no breaks
- Was authorised to recruit staff, including full-time permanent employees
- Was responsible for the business and all operation aspects of the unit he managed
- Had disciplinary powers, including over permanent employees
- Could authorise timesheets
- Ordered materials on behalf of Alstom, often in significant quantities and of high value
- Was authorised to negotiate contracts on behalf of Alstom
- Had a company phone, computer, access to the network and all confidential files
- Had to ask his line manager's permission to take leave

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Cyril Dennemont, Harold Benjamin

Could not provide a substitute.

Dennemont continues: "In addition to the overwhelming evidence supporting the manner in which he supplied his services as being consistent with an employee, Tilson's line manager also gave evidence to the effect that he considered Tilson to be an employee."

So, there is the potential that this landmark ruling could result in long-term 'permtractors' fighting for employments rights. But genuine contractors who prefer to remain outside of permanent employment and IR35 should be unaffected.

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