

Employment Review :
Non-Compliance of the Agency Workers Directive
(Mathew Taylor)

Exposing the gross failure of successive governments to implement both in word and the spirit of the agency workers directive in the light of recent tribunal decisions which abuse not just the commonsense definition of what is and is not temporary and takes advantage of employment practices prior to the **2010 Equality Act** and implementation of the **Regs in Oct 2011**. In effect, continuities of employment of whatever duration whether one year or many, with no significant break before and after the due date of implementation has been used in legal rulings to deny the change of status which should have been recognised as of right. The 12 weeks rule should have only been operative for those employed after that date.

Such interpretations fail to recognise agency workers status at due date of implementation and retrospectively adjusting their status...re the 12 weeks had already been served and not allow legal rulings to use previous employment to assert that they are at present being permanently employed as temporary workers. It breaches the common understanding that temporary is defined by the term short term re of short duration securing peaks and troughs and should not in any way be confused with the term of what is or is not permanent which at present risks the breach of any legal redress and promotes the judgement that the law is somehow not neutral between claimants and respondents and is in the pockets of those with power re the employer of labour.

We now have the ludicrous situation in which workers employed have service records with the company of nearly 20 years duration with no recognition of their value by the host company. They have not benefited from any company recognition for the value added and profit created down the years except minor concessions such as pro rata percentage increase in wage rates but with weekend working paid at the reduced day-rate, no factory bonus received, no service record recognised and awarded.....and no respect for workers and their families who live in the local community.

The recent case of **Mr T Jones & others V Birdseye(Case No 3401839/2015)** who to avoid increased labour costs involved in implementing the Regs set up an in-house flexible contract without a collective agreement and established a false comparator with agency workers employed there re the case was based on legal avoidance and failure of equal pay for equal work. The host company had full control via a variation of zero hours with no guarantee of weekly shifts doled out at each week-end and with only an annual guarantee of 400 hours. As proof of avoidance bordering on the perverse, the company insisted when framing its new flexi contract that it should as a matter of equality only guarantee its own flexi grade staff the same number of annual hours (400) as per the GI agency. The legal ruling approves such a false comparator and therefore as a consequence is presently covered via case law approval.

The union did consider taking the case to appeal but despite a recognition of injustice decided not to keep the case 'live' after securing legal advice that as case law now stands in the light of successive judgements including another recent one **re Moran-Ideal Cleaning EAT /0247/13** that there was little hope of securing a successful outcome and legal redress on behalf of 87 employees.

This has led the company after this ruling to advertise for further flexi temps and to further its current practice prior to Oct 2011 of displacing higher wage directly employed workers (via voluntary redundancy) and their subsequent replacement with exploitative contracts of lower wage-value to the said worker but lower costs to the company. In the round, the workers employed and community suffers reduced incomes and only fulfils short term profit for the individual company at the expense of real productivity gains and gives legal cover for bad practice by encouraging exploitation at variance with business responsibilities to working people. Despite equality of treatment and anti discriminatory measures, we now have employment practices which skew such social objectives and thus could be described as socialised hypocrisy re formal rights entailing no enactment and implementation in the real economy.

BACKGROUND

The firm **Birdseye**, part of the European conglomerate which includes the German firm Igloo and now owned by USA business group has for many years been reducing its variable labour costs by various ruses from extending temporary contracts up to 4 years and then when this became impossible resorted to employing a series of undercutting agencies (three in total and with at one time 2 agencies employed with different wage rates in different parts of the same factory re Manpower and Adecco) until 2011 when the company established a core flexi contract which instituted a false core comparator so as to avoid the agency worker regulations of equal treatment after 12 weeks with directly employed workers of the same grade.

Some workers have been at the same host workplace for nearly 20 years (one member of this group had originally been directly employed many years ago and was part of a group of workers who were unfairly selected for redundancy): he is part of the group of 87 workers in the recent case. The group took legal action based on selection criteria for redundancy but the judgements were so individually framed that the while workers were unfairly selected, the ruling did not stop the company from continuing with its business plan of replacing core workers with agency workers since the work positions still existed and were offered via an agency including one worker (previously referred to as part of the said group of 87) who after the conclusion of the previous case continued working there with no break of continuity.

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