



The voice of freelancing

Dragonfly Consultancy Ltd v. HMRC

Jon Bessell is an IT systems tester. He is sole director and 50% shareholder of Dragonfly Consultancy Ltd. This IR35 case pertains to three contracts on three separate projects, from January 2000 to January 2003, in which the client was the AA and the agency was DPP International Ltd. The amount of tax at stake is £99,000.

This case threatens the defence against IR35 built up by PCG since it was introduced. Under existing case law, one would expect Mr Bessell to be found outside IR35: he was subject to a low level of direction and control; he had a right to substitute, albeit fettered (but not unusually so); and there was no ongoing obligation between him and the client. He was clearly in business on his own account.

PCG is supporting this case in order to maintain the case law that has built up around IR35, and which makes it possible for contractors to maintain commercial relationships with their clients.

Key facts found at the Special Commissioners included:

- Mr Bessell's pass to enter the AA building bore a "C" to differentiate between him, as a contractor, and employees.
- Mr Bessell was able to use the onsite canteen and was invited to attend staff social functions.
- Mr Bessell provided a special chair at his company's expense for him to use on the AA's premises, to assist him with a back problem.
- Owing to his back problem, Mr Bessell was unable to work for a time, and received no payment during this period.
- Mr Bessell had a designated office at home, with two laptops, a fax, a scanner and office furniture.
- During the contract, Dragonfly paid £400 for a training course for Mr Bessell, to benefit his work on the AA contracts; the AA did not reimburse him for this.
- Mr Bessell did not take holidays at times that were significantly inconvenient for the projects; but he never billed for time during which he was on holiday, nor did he receive any payment.
- Mr Bessell undertook a small item of IT work for one other client during the period of his contracts with the AA.
- As market rates for IT contractors fell, the AA reduced Mr Bessell's day rate from £480 to £375.
- Witnesses gave a mixed view regarding substitution: other contractors had sent substitutes, but Mr Bessell never did, and there was ambiguity over whether one would be accepted without approval from the AA; the Commissioner found that one would not.
- Nobody told Mr Bessell how to do his work, but he was expected to complete tasks allocated to him by agreement with the team leader, and the standard of his work was informally monitored; he attended weekly team meetings and ad hoc discussions.
- The upper contract contained no right to send a substitute, and suggested that control rested with the AA; the contract between DPP and Dragonfly placed control with Dragonfly.

The Commissioner concluded that:

- the limited right of substitution did not point away from employment;
- the degree of control pointed towards employment;
- the intentions of the parties was irrelevant;
- the following factors pointed "weakly" away from employment:
 - o Dragonfly's provision of Mr Bessell's equipment
 - o Dragonfly's provision of training for Mr Bessell
 - o Mr Bessell's work for another client
 - o The lack of any sick pay or holiday pay for Mr Bessell.

The Commissioner stated: "Overall I find nothing which points strongly to the conclusion that Mr Bessell would have been in business on his own account."

Dragonfly's appeal against this ruling, supported by PCG, is being heard by the High Court in June 2008.