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Feature Article

Bogus "self-employment" – BALPA member wins Employment Tribunal claim which has ramifications for all contractor pilots on the same arrangements

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To all Ryanair members

As previously reported, BALPA has been supporting a former Ryanair pilot member who worked as a contractor pilot, supplied to Ryanair via McGinley Aviation (MCG) with a claim in the Employment Tribunal. His claim included a claim against MCG for status as both a worker and crew member, including an entitlement to paid holiday under the UK Civil Aviation (Working Time Regulations) 2004 (the CAWT Regulations). The former Ryanair pilot also brought a claim against Ryanair, arguing that he was an 'agency worker' of Ryanair, meaning he should have been entitled to the same basic working and employment conditions as directly employed Ryanair pilots.

I am pleased to report that the member, supported by BALPA, won the ET hearing, which took place last week, on all counts. This means that the pilot in question was, as the ET found, "patently" not "self-employed", but was instead a worker and a crew member of MCG, and also an agency worker of Ryanair as the hirer. The ET found that Jason Lutz "had no say in anything. He just did what he was told. This is the polar opposite of running a business...". The ET observed that he had "no choice as to the vehicle through which" he was to be engaged as this was "non-negotiable", and there was a "complete imbalance of power". The ET went so far as to describe the involvement of the 'service company' in these arrangements as a "fiction in practice".

The ET judgment also means the pilot should have received four weeks' statutory paid annual leave each year and the same basic working and employment conditions as directly employed Ryanair pilots. The arrangements under which this pilot was engaged were confirmed by MCG and Ryanair as being 'standard' and therefore this ruling has the potential to apply approx. 140 UK-based contractor pilots flying Ryanair planes via MCG. It also confirms what we have always believed – that the whole system of the so-called "self-employment" pilot model used by Ryanair and MCG was entirely bogus.

The full public ET judgment can be found HERE. Given the standard model used by MCG and Ryanair, this case has significant implications for the aviation industry as a whole and all pilots engaged via this model to work for Ryanair in particular. As the Employment Judge noted in paragraph one of his Judgment, whilst this was, "a hearing to decide…about Mr Lutz's status in his role as a pilot…it has, of course, a far greater significance than Mr Lutz's personal claim, as there are many pilots in precisely the same position as Mr Lutz".

The ET further observed: "More fundamentally it would be extraordinary if the [CAWT Regulations] did

not apply to Mr Lutz. This is a health and safety regulation. The need for such regulation for those flying passenger aeroplanes is obvious. It cannot be that a salaried pilot is subject to the [CAWT Regulations] but his/her contracted counterpart is not. On occasions a plane is flown by a contracted pilot and a contracted company pilot. It is impossible to contemplate that it is a proper construction of [CAWT Regulations] that these regulations, put in place to make sure that the pilots who fly passenger planes are not impaired by being overtired, apply to neither pilot of a passenger jet carrying hundreds of people…".

Given the significance of the case to BALPA members and the stakes of losing for Ryanair and MCG, the member was represented by a major London law firm and two high-ranking barristers, including a QC.

Our congratulations go to our colleague, Jason Lutz, who was prepared to stand-up and be counted on this important issue and also to Ben Morais, our BRCC chair, who took part in the ET hearing as a key witness.

We hope that MCG and Ryanair will now recognise the significance of this issue and accept the reality of the situation as found by the Employment Tribunal rather than seeking to prolong the process further by appealing the decision.

We believe that all contractor members based in the UK on similar arrangements have grounds for pursuing similar legal claims (i) against MCG for four weeks paid holiday per year, potentially going back to the date they started flying for Ryanair as a contractor and (ii) against Ryanair for an entitlement to the same basic working and employment conditions as directly employed Ryanair pilots.

We will be liaising with our legal team over the next few weeks to determine the best way of supporting other contractor members who wish to pursue similar claims for holiday pay against the agency with whom they are engaged (MCG or CAE Parc) and Ryanair for parity of treatment. Please standby for further information.

Regards

Chris Jones
BALPA National Officer

Benjamin Morais
Chairman/H&S/Welfare/D&G
07941 642418

Dan Marchbank
Representative
07849 530012

Paul Roberts
Representative
07730602798

Chris Jones
BALPA National Officer
07809 658538

Simon Roberts
BALPA Scheduling Specialist
07738 993714

BALPA Membership team

Visit the website