

Employment status: An important reminder on the use of substitution clauses

24 July 2025  Katie Williams and Mohima Sheefa

The case of BCA Logistics Ltd v Parker and others [2025] EAT 94 concerned determining whether claimants who were referred to as 'self-employed' were in fact workers.

Claimants were engaged by BCA Logistics Ltd as drivers to undertake vehicle collection, inspection, delivery and transport services.

One of the key issues was whether the substitution clause was 'genuine'. To meet the definition of being a worker, the individual must be under an obligation to provide a personal service.

The contract between BCA and the claimants contained a substitution clause. The Employment Tribunal (ET) held there was no genuine right to substitution and that the contractors were workers, providing seven key reasons for the decision:

- The claimant's evidence on the issue was much more credible than that provided by the BCA.
- There was no plan or process to deal with the practical problems that would arise if drivers used a substitute.
- There was no training or guidance for drivers on how to engage and use a substitute.
- There was no training offered to substitutes (BCA's drivers were required to undertake a four-day training course).
- It was unrealistic to think that substitutes could do inspections, or that BCA's customers would be content for a potential untrained substitute to do this work.
- It was unrealistic to think that BCA would be prepared to risk handling the customers' vehicles over to someone they do not know.
- In just over 25 years, no driver had ever used a substitute.
- The Employment Appeal Tribunal upheld the first instance decision.

This case is an important reminder to employers that the ET will look at the reality of the situation when assessing employment status; it is not sufficient to merely have a written substitution clause in the contract.

Employers should be proactively reviewing roles, renewing or updating contracts and ensuring that substitution clauses are practicably enforceable and used in practice to be effective.

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