

Workers Status: Right of Substitution

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A courier's ability to "release" a delivery job was not an unfettered right of substitution.

THE FACTS

To be a worker, an individual must be obliged to carry out services personally. If the individual has a genuine and unfettered right of substitution, they are not considered to be under such an obligation and will not be a worker.

Mr Augustine was a motorcycle courier who worked for Stuart Delivery Ltd, a technology platform connecting couriers with clients via a mobile app. He made ad-hoc deliveries and also signed up for "slot" deliveries. Couriers signing up to "slot" deliveries agree to be available for work in a particular area for a particular period in return for a guaranteed minimum payment. Once accepted, the slot can be cancelled by the courier by sending a "Release notification", which makes the slot available for other couriers on first come, first served basis. However, if no other couriers accept the slot, the original courier remains liable to complete it and faces sanctions if they do not.

Mr Augustine tried to bring claims against Stuart Delivery, including claims for unauthorised deductions and holiday pay. To do so, he had to convince an Employment Tribunal that, while he was doing "slot" deliveries, he was a worker. One of the key arguments raised by Stuart Delivery was that Mr Augustine was not under an obligation to perform services personally because his ability to release a slot undermined the obligation of personal performance, and he was not therefore a worker.

The Tribunal and the Employment Appeal Tribunal disagreed with Stuart Delivery. The release procedure was not an unfettered right of substitution such as to undermine the obligation of personal performance. Mr Augustine would only be released from the obligation to undertake the slot himself if another courier took up the slot and Mr Augustine had no control over whether this would happen. There was no right of substitution, merely a right to hope that someone else in the pool would take on the obligation.

WHAT DOES THIS MEAN FOR EMPLOYERS?

This is a reminder to clients that a right of substitution must be carefully drafted and deployed if it is to be used to support an argument that an individual is not a worker. A right to substitute only with the consent of another person, where that person has the discretion to withdraw consent, will not be sufficient.

[Stuart Delivery Ltd v Augustine \[2019\]](#)

Authors



Ceri Fuller

London - Walbrook
cfuller@dacbeachcroft.com



Zoë Wigan

London - Walbrook
zwigan@dacbeachcroft.com



Hilary Larter

Leeds
hlarter@dacbeachcroft.com