



Organist Publications Ltd

19 Chestnut Avenue, Ewell, Epsom, Surrey KT19 0SY.

Telephone: 020 8224 5695

E-mail: robert.leach1@btinternet.com

PRESS RELEASE 1

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A church organist is an employee

An employment tribunal has ruled that a church organist is an employee.

This means that organists in the Church of England have full employment rights. After a year, they may bring a claim for unfair dismissal against the vicar and PCC if sacked without good reason. Although it has long been believed that church organists are employees, this is the first known case where such a decision has been given by an Employment Tribunal.

The case concerned an eminent and well-qualified organist and choirmaster in the north of England who was dismissed. He brought a claim for unfair dismissal. As a preliminary point, the church authorities said that he was not an employee. This matter was addressed in two hearings over three days last November and December. The decision has just been made public.

The case can now proceed to hearing the substantive issue of whether the organist's dismissal was fair. An Order has been made which prevents publication of any material that can identify either the organist or church. Accordingly this preliminary decision has been issued as *A v B and C [2008]*.

In the decision, the judge paid particular attention to the amount of control exercised by a vicar under Canon B20. Strictly, this decision only applies to the contract, which applied for this one organist, but the terms of the judgment are such that the ruling will apply to almost all organists in the Church of England.

Organist Publications Ltd director Robert Leach appeared as an expert witness at the tribunal for the organist. Leach says, "This is a landmark decision which should greatly help to improve the working relationship between organists and church authorities. It is estimated that about two-thirds of qualified organists are no longer prepared to accept an appointment in the church. Problems in working with vicars are one of the most quoted reasons. Establishing that an organist is an employee will help ensure that the relations are now properly governed by employment law."

Notes to editors

1/. The appointment of organists in the Church of England is governed by a mixture of canon law, contract law and employment law. There is no single test for when someone is an employee. The matter is decided by considering indicia for employment and indicia for self-employment. In this case, the indicia were clearly in favour of employment status.

2/. The vicar and PCC have the right to appeal against this decision, though the clear and decisive wording of this judgment would seem to make the chances of success unlikely.

3/. An employment tribunal does not establish a binding precedent under English law, but this decision does establish a persuasive decision that may be quoted in any future dispute relating to an organist.

4/. At the tribunal, the church authorities argued that the organist was self-employed because he agreed to be paid gross without any deduction under the PAYE system. The judge accepted that the tax treatment of an individual is irrelevant in determining employment status. There is, anyway, a special “religious centre exemption” scheme which allows organists and other church employees to be paid gross without having PAYE deducted, provided that there is no PAYE scheme in existence and the sums paid do not exceed the PAYE threshold.

5/. Organist Publications Ltd was established in 2005 to provide assistance, advice and other resources for church organists. Barry Williams, a lawyer, and Robert Leach, a chartered accountant, run it. They deal with at least one new organist dispute every week. They work closely with the Royal School of Church Music and other church music bodies. They wrote and published *Everything Else an Organist Should Know*, which has become the standard reference book on legal and financial issues relating to organists. The book was authoritatively quoted at the tribunal. Robert Leach appeared as an expert witness for the organist.