

EMPLOYMENT LAW BULLETIN – NOVEMBER 2007

RECENT CASES COURT OF APPEAL

Jackson v Computershare Investment Plc – Tupe does not give extra rights

Mrs Jackson was employed by CI in 1999. CI's business transferred to CIS in 2004, and it made Mrs Jackson redundant in 2005. CIS made enhanced redundancy available only to employees who had joined prior to 2002 and did not pay Mrs Jackson. TUPE could not be used to "miraculously transform" Mrs Jackson into someone who joined CIS pre-2002 when, as a fact, she joined CIS in 2004. Therefore, she was not entitled to the enhanced payment.

EMPLOYMENT APPEAL TRIBUNAL

Miller v Community Links Trust Limited – claim rejected as 9 seconds out of time

The EAT agreed with the employment tribunal's decision to reject a claim that was 9 seconds out of time. It was submitted on the website at 23:59:59 but arrived at 00:00:08. there was no reason for the delay and so was held to be out of time.

Environment Agency v Rowan – steps for considering reasonable adjustments

An Employment tribunal must identify (a) the provision, criterion or practice applied by the employer which places the disabled party at a disadvantage, or (b) the physical feature of premises occupied by the employer, (c) the identity of non-disabled comparators (where appropriate) and (d) the nature and extent of the substantial disadvantage. This means the tribunal must look at the overall picture.

UK Coal Mining Limited v National Union of Mineworkers – Duty to consult on the reason for redundancy

The law requires employers to consult with employee representatives when 20 or more employees are being made redundant at one establishment within a 90 day period. It has been traditionally thought that this does not mean the employer has to consult about the reasons for the closure of a business even if it is going to lead to redundancies. However, this case has decided that the obligation to consult over avoiding the proposed redundancies inevitably involves engaging with the reasons for the dismissals, and that in turn requires consultation over the reasons for the closure.

Lyddon v Engelfield Brickwork Limited – no holiday pay on termination if rolled up rate clearly agreed by employee

The EAT held that the fundamental question was whether there was a consensual agreement identifying a specific sum attributable to holiday. There was - the payslips identified the sums, which were calculated according to an established system. The criteria of transparency and clarity were met, and the payments could be set off against holiday pay. Mr Lyddon was not entitled to any further pay.

LEGISLATIVE CHANGES

Rates Increase

As from 1st October 2007 the national minimum wage increased. For workers over 22 it is now £5.52 per hour. It is £4.60 for workers aged between 18-21 and those aged 22 and over doing accredited training in the first six months of employment and £3.40 for workers aged between 16-17.

Holiday Increase

For those who missed it, the statutory annual leave entitlement increased to 4.8 weeks (24 days for a 5 day per week employee) on 1 October 2007.

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The information given in this bulletin was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.