

EMPLOYMENT LAW BULLETIN – NOVEMBER 2006

RECENT CASES

EMPLOYMENT APPEAL TRIBUNAL

Unfair dismissal procedures where "it wouldn't have made any difference anyway"

Kelly-Madden v Manor Surgery

Ms Kelly-Madden was dismissed from her job at a doctors' surgery for taking unauthorised pay for overtime hours. Proper procedures were not followed in dismissing her and she claimed unfair dismissal. An employment tribunal held that the dismissal was fair and that even if that were wrong there would be no compensation as she had contributed 100% to her dismissal. The EAT dismissed her appeal. The issues in this case are in fact highly technical and of considerable importance. They relate to the proper interpretation of new s.98(A)(2) of the Employment Rights Act 1996 (in plain English: providing an "it wouldn't have made any difference if proper procedures had been followed" principle).

Admissibility of "without prejudice" discussions

Brunel University v Professor Vaseghi

Normally "without prejudice" discussions for settlement of a race discrimination/victimisation claim would be inadmissible in evidence at the full hearing but the EAT has held that a written report of the employing University's Grievance Panel including such evidence was admissible on the basis that the Employer had waived their right to without prejudice status for those discussions or it was an abuse of privileged occasion and discussions surrounding those without prejudice offers were also admissible at the full hearing.

ETO tupe defence on harmonisation

London Metropolitan University v Sackur

A dismissal by reason of the transfer itself or a reason connected to it is automatically unfair unless there was an "economic, technical or organisational reason entailing changes in the workforce". The EAT confirmed that this meant a change in the numbers or functions of the employees. If the primary reason for the change is the transfer itself (as will be the case in most harmonisation of terms) then the change will be void.

HIGH COURT

Age Discrimination challenge

The new anti-age discrimination laws which came into effect on 1st October do not protect employees of 65 or over against enforced retirement. Heyday (an organisation linked to the Age Concern charity) claims that this is a breach of EC law (*the Equal Treatment Framework Directive*). The question is due to be considered by the High Court on 6th December 2006.

LEGISLATIVE CHANGES

St Georges Day Bill

A private members bill has been introduced in the last month proposing to make 23rd April a bank holiday in England in recognition of St Georges day .

New CIS scheme

The delayed revised version of the Construction Industry Scheme (CIS) is now due to come into operation on 5th April 2007. Cards and certificates are being replaced by a 'verification' service to confirm whether subcontractors should be paid gross or net, which essentially turns on whether they are employees or self-employed sub-contractors.

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