

EMPLOYMENT LAW BULLETIN – MAY 2008

RECENT CASES COURT OF APPEAL

Enfield Technical Services Limited v Payne and BF Components Limited v Grace

– Incorrect tax labelling with employees consent will not necessarily defeat an unfair dismissal claim

The contracts of two employees who had been treated as self-employed for tax purposes were not illegal. If they were then the employees could be denied the ability to claim unfair dismissal. The employees' active participation in the incorrect labelling of the employment relationship was not sufficient to make the contract illegal. Unless the employee lies about something in order to gain self employed status, the fact that an employee has previously benefited from the tax advantage of being self-employed will not prevent them from subsequently claiming the advantages of being employed.

Dynamex Friction Ltd and another v Amicus and others –Tupe dismissals and the decision maker

Only the reasons of the person who took the decision to dismiss must be taken into account when determining the reason for dismissal. In this case, the administrator had carried out the dismissals and (as the tribunal had unambiguously found) his reasons for the dismissals were economic and not transfer-related. The fact that the eventual transferee may have "stage-managed" the dismissals was immaterial, as this had not affected the administrator's decision.

EMPLOYMENT APPEAL TRIBUNAL

Duncombe & Others v The Secretary of State for Children, Schools and Families *(formerly the Department for Education and Skills)*

– Fixed-term employees working outside the UK can claim breach of contract

An employment tribunal has the authority to hear employees who were employed to work abroad under fixed-term contracts claims for breach of contract and for pay in lieu of notice, but such claims were dependent on the application of regulation 8 of the Fixed-term Employees (Less Favourable Treatment) Regulations 2002, that is, the claimants had to be permanent employees as declared by an employment tribunal.

Neufield v (1) A&N Communications In Print Limited in Liquidation (2)SS for Trade and Industry

It was held in this case that the controlling shareholder was also employed by the company. The EAT also decided that, in the case of company insolvency, the date when the question of status had to be decided was the date when the company became insolvent.

EMPLOYMENT TRIBUNAL

Swann v GHIL Insurance Services UK Limited –Flexible benefits package and age discrimination

A tribunal has held, by a majority, that the provision of a fund to staff with which to purchase items from a flexible benefits package was not capable of amounting to less favourable treatment on the grounds of age. This was notwithstanding the fact that the benefits scheme provided an option to join a private health insurance scheme whose premiums were calculated according to age and gender. The majority went on to hold that even if the offer of the benefits package had amounted to discrimination on the grounds of age, they were satisfied that the employer had made out the justification defence having made all reasonable efforts to offer its employees a flexible benefits package that was the most advantageous possible to staff, and, on the balance of probabilities, the package would have the desired beneficial effect on the recruitment and retention of staff.

LEGISLATIVE CHANGES

Employment Bill (2007-08)

The Employment Bill (2007-08) has now been republished following its amendment in the House of Lords' Grand Committee on 4 April 2008. This is set to repeal the provisions relating to the statutory disciplinary and grievance procedures.

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