



NOVEMBER 2008 ... VOL 2 ... PART 1

EMPLOYMENT TEAM NEWSLETTER

October proved another busy month for the Employment Team at Hardwicke Building. In this edition of our newsletter we discuss some of the key topics that have been occupying our time, including redundancy and age discrimination, and also examine some decisions that should be useful to you all. If you have any suggestions or ideas for our coming editions please contact Louise Poppelwell, Marketing Manager at Hardwicke Building on louise.poppelwell@hardwicke.co.uk or phone Louise on 020 7242 2523 .

Mostly this month we have been ...

- A quick survey of our Employment Team members reveals that during the month of October there is one subject we have been asked to advise on more than any other: redundancy. There's a recession out there, as we're sure you are all aware, and we are currently advising both employers and employees on the procedural and substantive aspects of making redundancies
- In some tribunals we have come across there appears to be a lack of judicial resources, with not enough judges available to hear matters
- TUPE has, as ever, provided a fruitful area for advisory work and for members of our team, the not-so-very-new regulations, and their effect on the outsourcing of work, have taken up a lot of time

Age Discrimination – even Parliament can't stop us getting old.

The EAT, in the course of allowing the appeal of the employer in Chief Constable of West Yorkshire v Homer EAT/0191/08, pointed out that as we get older we have fewer working days left, something that even Parliament can't change. A requirement that an employee has a law degree, in order to be graded at the top grade, did not discriminate against a 61 year old employee. He was treated the same as every other employee. The fact that he could not materially benefit from gaining a law degree because he would be nearing retirement age by the time he qualified, was because his working life was limited but did not amount to age discrimination. The disadvantage was a consequence of his age, not the consequence of age discrimination.

I resign ... er, can I change my mind?

We all come across people who just won't make up their mind. The EAT in Ali v Birmingham City [UKEAT/0313/08](#) held that where Mr Ali had been given 30 minutes to reconsider his decision to resign and then confirmed his choice, he could not change his mind. To come within one of the exceptions outlined in Southern v Franks Charlesly [\[1981\] IRLR 278 CA](#), the matter had to be highly exceptional.

Some useful decisions on practical issues.

In GFI Holdings v Camm [UKEAT/0321/08](#), the EAT held that the tribunal had fallen into error by not staying the ET proceedings and allowing a bonus claim issue to be firstly determined in the High Court. The issue of dismissal was common to both claims. This is a potentially useful decision when trying to persuade the ET to stay their proceedings.

Solicitors often face the problem of whether they can act for a corporate client in employment matters involving an employee of a company with which they have had significant dealings with. In *Winters v Mishcon de Reya* [2008] EWHC 2419 (Ch) the High Court held that solicitors were not prevented from acting against the former chief executive of a corporate client in an employment dispute. The solicitors had previously also acted for the chief executive, but only for short periods, and in matters where the retainer was either a joint one with the company, or where there was no question of any misuse of confidential information. We would still say, “tread cautiously.”

The Information Commissioner’s Office has ordered the Department of Business, Enterprise and Regulatory Reform to make public the names of parties involved in ET cases. Of course you may not have been aware that on 1st October 2004 the government stopped publishing the Public Register of Employment Tribunal Applications. There is no hiding place now!

The EAT in *Burmis v Aylesford School* [UKEAT/0003/08](#) held that even excessive delay in handing down a decision (in that case exactly one year) was not a self-standing ground of appeal. The decision that was eventually handed down was over 300 pages long – can anyone beat that?

Upcoming Seminars.

Over the coming months the Hardwicke Building Employment Team will be providing seminars for members of the Chartered Institute of Personnel and Development (CIPD) at various venues in the UK. Look out for us near you...!

If you would like our members to provide you with in-house CPD accredited seminars on particular employment topics then please do not hesitate to contact Louise Poppelwell by email at louise.poppelwell@hardwicke.co.uk or by phone on 020 7242 2523 for further information.

This newsletter was edited by PJ Kirby. For further information on the Hardwicke Employment Law Team and the services we offer, please visit our website at www.hardwickebuilding.co.uk

The members of Hardwicke’s Employment Team have specialised skills and experience in all aspects of employment law including matters such as discrimination, unfair dismissal and redundancy, restrictive covenants as well as non-contentious work. We represent both employers and employees via conventional means in addition to direct access.

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PJ Kirby	1989	David Lawson	2000
Colm Nugent	1992	Morayo Fagborun-Bennett	2004
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