Hardwicke

Employment Newsletter

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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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Welcome to the October edition of the Employment Newsletter – the first after the summer break. We hope you enjoy our new look! In this edition we update you on some recent cases in Employment Law which may be of interest to you. If you have any comments or suggestions for future editions please contact Louise Poppelwell, Marketing Manager, by email on louise.poppelwell@hardwicke.co.uk. Please take a few minutes to look at our new website at www.hardwicke.co.uk

Mostly this month we have been...

- Advising on more doom and gloom redundancies...
- Annoyed with the Listing section at ET's cancelling (on consecutive occasions) hearings at 3:30 pm the day before because 'there are no employment judges?'
- Presenting an employment law update seminar to SEE
- Zeeshan Dhar is representing a national employer in a multi party action for unlawful deduction of wages involving 116 Claimants. The point of law in issue is whether a one off compensatory payment paid through the payroll system constitutes 'wages' for the purposes of S13 ERA.
- Zeeshan is also involved in a matter for a national PLC determining the issue of what constitutes an 'associated employer' under Section 139(2) ERA in the context of identifying suitable alternative employment in a redundancy situation
- Sarah Malik successfully negotiated a settlement for an ex-employee of a world-leading investment organisation who was made redundant. She was also involved in advising Claimants in an action for unfair dismissal on the grounds of redundancy against a leading international law firm

Roberts v Carling [2009] UKEAT/0183/09

When considering an application for relief from sanction, ET's and the EAT must take account of the CPR.

In this case the employee won a claim for sex discrimination. The EAT refused to hear the employers appeal on the basis it had no reasonable prospect of success but agreed to hear an appeal by the employer on the ground of bias subject to the employer complying with an 'unless order'. The consequence of failing to comply with the unless order was that the appeal would be dismissed.

The unless order required the filing of an affidavit by the employer within a certain deadline. The affidavit was filed after the required deadline. The EAT Registrar determined that the affidavit had not been served in time and as no reasons had been provided, an extension of time was refused.

The employer applied for that refusal to be overturned and the EAT found in favour of the employer.

HHJ McMullen QC, presiding, found: '*when an unless order has not been complied with, the sanction...applies automatically without further order. The question is whether that leaves the party without any redress. When that happens in the civil court, CPr 3.89 might come to the rescue'.*

HHJ McMullen QC confirmed that following the EAT judgment in **Neary v St Albans Girls School and Another, 13 January 2009**, ET's have jurisdiction to provide relief from sanctions.

Increase in Vento Damages for injury to feelings

In the case of *Da'Bell V NSPCC,* HHJ McMullen QC, has held that awards for injury to feelings in discrimination cases should be revised to take account of inflation:

- Lower Band: increase to £6,000 from £5000
- Middle Band: increase to £18,000 from £15,000
- Upper Band: increase to £30,000 from £25,000

Employment Law Changes

Update your systems...from 1st October 2009 the following changes came into force:

- National Minimum Wage increased to £5.80 per hour
- Increase in the maximum weekly amount to caluclate redundancy and dismissal payments to £380 per week
- Reduction in the age required to receive the adult NMW from 22 to 21 years
- The Vetting and Barring system to check the suitability of employees working with vulnerable adults or children

commenced on 12th October 2009. Two 'barred lists' replace existing lists and are to be administered by a newly created agency, the Independent Safeguarding Authority (ISA), instead of several Government departments. ISA will work closely with the CRB and will vet and register all individuals who want to work with vulnerable adults or children. Although there is no legal obligation on employers to check the lists until November 2010, criminal sanctions will follow for employers who knowingly employ barred individuals to work with vulnerable groups.

Belief Discrimination

The Former Head of Grainger PLC has brought a claim stating that his dismissal by reason of redundancy was an act of unfair dismissal and discrimination on the grounds of ‘religion or belief’ on the basis that ‘*mankind is headed towards catastrophic climate change*.’

At a PHR in March 2009, an Employment Judge at the Central London ET found that the conviction that climate change was the world’s most important environmental problem did amount to a ‘philosophical belief’ for the purposes of the **Employment Equality (Religion and Belief) Regulations 2003 SI 2003/1660.**

The case is being appealed to the EAT with leading Counsel on both sides....watch this space!

A Question of Status

Judgment has been provided by the Court of Appeal in the case of **Autoclenz Ltd v Belcher and Others [2009] EWCA Civ 1046**. The case concerned a challenge on the grounds of perversity and also the age old problem of employment status. In respect of employment status, the Court has held that a requirement for individuals (car valeters in this case) to provide notification of not turning up to attend work was capable of being construed as 'wholly inconsistent' with a written term agreed between the parties that there was no obligation to carry out any work at all. In the circumstances, the written term was not the true understanding between the parties. The Court of Appeal held that the Tribunal was *'entitled to infer from the evidence recited that the substitution clause did not genuinely reflect the rights and obligations of the valeters'*. The case is also authority for the proposition that there is no necessity to find written terms agreed between the parties were in fact a Snook sham: (parties intentionally misleading each other).

This newsletter was edited by Sarah Malik. For more information on Hardwicke and Employment Law, visit www.hardwicke.co.uk

Nigel Jones QC	1976 (1999)
Stephen Lennard	1976
Barbara Hewson	1985
Peter (PJ) Kirby	1989
Colm Nugent	1992
Christopher Camp	1996
David Lewis	1997
Zeeshan Dhar	1999
Sarah Malik	1999
David Lawson	2000
Denis Edwards	2002
Morayo Fagborun-Bennett	2004

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