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Employment Briefing

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Case of the month

It is often said that a contract of employment cannot be altered unilaterally. The recent decision of the EAT in **Bateman & Others v Asda Stores Ltd** [2009] UKET/0221/09 reveals this to be an oversimplification.

Asda had a handbook that contained the following term: *“The Company reserves the right to review, revise, amend or replace the content of this handbook, and introduce new policies from time to time to reflect the changing needs of the business and to comply with new legislation.”* After a full process of consultation Asda relied on this term to transfer certain staff to a new pay structure and 700 employees brought claims for unauthorised deductions from wages, breaches of contract and, in some cases, unfair dismissal.

Both the tribunal and the EAT upheld the employer’s right to rely on the clause in the handbook. Claims by the employees that the clause only related to policies and not contractual issues and that a change in pay required consent were rejected. An earlier decision of the Court of Appeal in **Wandsworth London Borough Council v D’Silva** [1998] IRLR 193 to the effect that an unusual power like this was possible but required clear language was relied on and the language used in this clause was held to be quite clearly applicable to even as fundamental a contractual term as pay.

Some may find this surprising and others will be thinking of changing their handbooks. Before doing this there are two bear traps to avoid.

First, Asda were attacked for not acting in accordance with their duty of confidence and trust when they introduced this clause by not explaining its significance clearly to all employees. This attack failed for technical reasons as the claimants did not raise the issue at the tribunal and therefore were not allowed to do so on appeal. In another case the point might be taken to some effect particularly in the case of a workforce that may not have easily understood the implications of the clause.

Secondly the **Wandsworth** case made it clear that a court would be reluctant to apply a power of unilateral variation to produce an unreasonable result and the courts in construing such a clause would seek to avoid such a result.

The lesson is that the manner in which a change like this is introduced and then implemented is as important as the clear drafting of the clause.

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Further Information

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