

RadcliffesLeBrosseur



Employment Briefing

May 2009

Case of the Month

When negotiating a compromise agreement correspondence is often made “subject to contract” without parties always knowing exactly what that means. This was explained by the Court of Appeal in *Kirklees Metropolitan Council v Robert John Radecki* [2009] EWCA Civ 298, a case in which there was confusion about whether a deal had been done and over the date of termination. On the surface the claim was about whether a tribunal claim had been brought within the three month time limit but the more important legal issue was whether and when the employee had been dismissed.

On “subject to contract” its effect is that (i) neither side is to be regarded to be contractually committed to any of the terms the subject of the negotiations, (ii) each side is at liberty at any stage to withdraw and (iii) each side is committed to the other only after they sign the formal compromise agreement.

The significance of these principles emerged after negotiations had stretched over many months. The compromise agreement was never signed although the employee told his union in writing that he would sign. Expecting him to do so the employer stopped paying the employee at the end of October 2006. The union eventually withdrew representation and the application claiming unfair dismissal was not presented until 5th March 2007.

The employer said the claim was out of time as the employee had been dismissed when they stopped paying him.

The tribunal agreed because it said there had been an agreement employment should end then reflected in the draft compromise agreement which said the termination date was 31st October and the employee’s written agreement to sign the agreement. The Employment Appeal Tribunal overruled the tribunal on the basis that because the compromise agreement was still “subject to contract” no agreed date of termination existed.

When the case went to the Court of Appeal they too held that that there had been no agreement reached but concentrated on the actions of the employer in stopping pay at the end of October. This was a fundamental breach of the contract which had the effect of ending the employment in the context of the statutory concept of the effective date of termination: particularly as the employee was well aware of the pay stoppage and had done nothing about it until it was too late. Accordingly the claim was out of time.

**Published in The Grapevine Magazine
May 2009 © RadcliffesLeBrosseur**

Further Information

If you would like further information or to comment in general regarding this case, please contact



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