



### Case of the Month

Legal rights are of no use without effective remedies. In ***Rank Nemo (DMS) Limited v Coutinho*** [2009] EWCA Civ 454 an employee who won a case for unfair dismissal and race discrimination. The tribunal awarded £72,000 compensation. The liability for the compensation had passed to the respondents under the TUPE regulations. The respondents refused to pay and the claimant then obtained a county court judgment against them which was also not paid.

The claimant then brought a new set of proceedings against the respondents claiming that in failing to pay him they had victimized him for bringing the discrimination claim. The tribunal threw out the claim on the ground that this was nothing but an attempt to enforce the debt and that was not the purpose of the victimization remedy. The EAT overturned the tribunal decision and the employers took that decision to the Court of Appeal.

The decision of the Court of Appeal was that the tribunal had been wrong. This was an issue separate from enforcement and the claim for victimization was capable of being brought even four years after his employment had ended. The unexplained conduct of the respondents in failing to comply with judgments was capable of being discriminatory in an employment context. This treatment the claimant had received had to be considered and compared with others who had been made redundant and received their legal entitlements. Accordingly the case was remitted to investigate the facts and decide whether the reason for the non payment was discriminatory or not.

If following that investigation it was found that the reason for non payment was retaliation for having brought the discrimination proceedings then there could be a sufficient link to the previous employment relationship that satisfied the test that the claimant had suffered a detriment because of victimization. Accordingly there was no reason in principle why the claimant could not enforce the county court debt as well as recovering damages for the victimization.

The case highlights a lack of logic in available remedies. In a previous case the House of Lords had held that an employee could not bring a victimization claim after he had won a discrimination claim and obtained a re-instatement order. The employer refused to re-instate and was then ordered to pay compensation and again failed to do so. There is no victimization remedy for failure to re-instate and the inconsistency needs the attention of the legislature.

**Published in The Grapevine Magazine  
July 2009 © RadcliffesLeBrasseur**

### Further Information

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



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