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Employment Briefing

November 2009

Case of the Month

Constructive dismissal is a term often misunderstood. It has become more complicated over the years. The basic concept allows an employee to resign and claim unfair dismissal because of repudiatory conduct by the employer. Such a resignation can be with or without notice but the conduct relied on must be sufficiently serious to allow immediate resignation. Ordinary cases are easy to understand so, for example, a failure to pay wages or an unjustifiable demotion will allow such a claim.

This relatively simple principle has been added to by the development of the theory of the implied contractual term of trust and confidence that has to subsist between employer and employee. This has led to many cases turning on a tribunals decision as to whether particular actions which otherwise might simply be labelled “unreasonable” are sufficiently serious to undermine and destroy the implied term and amount to a breach of contract sufficiently serious to permit a resignation amounting to a constructive dismissal.

To these two ingredients let’s now add the “last straw” doctrine. This is when the employee’s resignation is a response to a series of acts which taken together with the final act permit a resignation to be a constructive dismissal. The way this principle works was explained in the recent decision of the EAT in ***Saunders v Department for Work & Pensions – Child Support Agency*** UKEAT/0052/09/JOJ.

In this case an employee with a disability was given very short notice that she had to stop working at home.

She had a number of other complaints about her treatment by the employer and the tribunal went about its business of deciding the case by asking itself this question.

“Has the Respondent committed a breach of contract which goes to the root of the employment relationship or a series of breaches culminating in a breach which is effectively the last straw?”

This was a misstatement of the law as what is required is a series of incidents none of which may be a breach of contract but which in aggregate amount to a fundamental breach. The final act may itself be relatively insignificant but it must not be utterly trivial. However you do not take the last event in isolation but have to add it to the previous incidents and the tribunal by a process of evaluation and appreciation of all the evidence will decide whether the entire series of events amounts to a repudiatory breach.

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Further Information

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



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