

RadcliffesLeBasseur



Employment Law News 4

May 2010

In this month's Employment Law News, we look at situations where employers may determine a disciplinary issue before the grievance procedure has been concluded. In addition, we look at a case which has determined that a worker may suffer from a detriment where a disclosure was made to a former employer and we consider what the new coalition government may have in store for the employment law field.

Case round up

Samuel Smith Old Brewery (Tadcaster) –v- Marshall and Another (UKEAT/0488/09)

In this case, the independent brewer, Samuel Smith, required its pub managers to reduce staffing hours when faced with financial issues.

The two managers refused and submitted a grievance saying that they would have to work an unacceptable number of hours themselves as a consequence of this measure. Their grievance was not successful, but they still refused to comply, stating that the brewery should hear their grievance appeal hearing before they had to implement the brewery's request. The brewery then started formal disciplinary proceedings against the pub managers. The managers refused to attend the disciplinary hearing and were subsequently dismissed.

The Employment Tribunal held that they had been unfairly dismissed as the brewery should have waited for the conclusion of the grievance appeal before dismissing them given that it related to the same subject matter. The brewery appealed to the Employment Appeal Tribunal which held that an employer did not have to hear a grievance appeal hearing before determining a disciplinary matter and subsequently dismissed the employees.

Employment Law News 4 - May 2010

The Judge held that, without some element of unfairness or uncompensatable prejudice, only in the rarest of cases would it be held to be unreasonable to proceed with a disciplinary process before hearing a grievance appeal. This was not the case here. The Employment Appeal Tribunal commented that there had at least been the first stage of the grievance procedure and, furthermore, that the employees had missed their opportunity to raise some of the points they would have brought up at the grievance appeal hearing in deciding not to attend the disciplinary hearing.

Employers should be aware that this decision did of course turn upon its own specific facts and therefore careful consideration should be given should a similar situation arise.

BP plc –v- Elstone (UKEAT/0141/09)

The Employment Appeal Tribunal held that a worker can claim that he has suffered a detriment for whistle-blowing against his current employer even if he was employed by a different employer at the time that he actually made the protected disclosure.

Mr Elstone worked for Petrotechnics Limited; prior to that he had had a long career with BP plc. His work at Petrotechnics Limited included evaluating safety processes for clients, one of whom was BP plc. Mr Elstone subsequently had some health and safety concerns relating to some of the BP plc contracts and made a number of disclosures to senior BP plc managers about his concerns. When Petrotechnics Limited found out, they dismissed Mr Elstone on the grounds that he had breached confidential information.

Mr Elstone then began working for BP plc as a consultant. His consultancy was terminated when BP plc was told by Petrotechnics Limited that Mr Elstone had been dismissed for disclosing confidential information. Mr Elstone then brought a whistle-blowing claim against BP plc on the grounds that he had suffered an unlawful detriment contrary to Section 47(b) of the Employment Rights Act 1996.

In reaching its decision, the Employment Appeal Tribunal upheld the purposive approach of the Employment Tribunal to the legislation i.e. that the purpose of the legislation was to protect employees and workers who had made a protected disclosure, no matter who they actually worked for. The Employment Appeal Tribunal looked particularly at Section 43(c) of the Employment Rights Act 1996 and found that a protected disclosure did not need to relate to the employer or the employee's business and nor need it be made to the employer, although it did find that the protection against a detriment had to relate to the worker's current employment.

In the news ...

Coalition Government

An overview of the Government's intentions is set out in 'The Coalition: our programme for government', a document published earlier this month and in the Queen's Speech delivered at the State Opening of Parliament on 25 May 2010. Below are some of the changes that employers may see under the new coalition government.

Retirement and pensions

- The Government will phase out the default retirement age and hold a review to set the date at which the state pension age starts to rise to 66.
- An independent commission will be established to review the long-term affordability of public sector pensions. Other measures relating to pensions include restoring the earnings link for the basic state pension from April 2011 and exploring the potential for people to access part of their pension fund early.
- Compulsory annuitisation at 75 will be ended.

Europe

Some of the EU's existing competences will be examined with particular emphasis on limitation of the application of the Working Time Directive in the UK and possibly an examination of UK legislation relating to employment law that goes further than required by the EU.

Equality Act 2010 and Agency Workers Regulations 2010

The Equality Bill jumped safely through all of the legislative

hoops in advance of the General Election and became the Equality Act 2010 on 8 April 2010, when it received Royal Assent. Most of the provisions are due to take effect in October 2010 and it is unlikely that either the Equality Act 2010 or the Agency Workers Regulations, which are due to come into force in October 2011, will be substantially reworked. It is probable, however, that they will both be subject to review and some of their provisions will be phased in or watered down so as not to over-burden employers at a time of economic uncertainty and, in the public sector, in the face of substantial budget cuts.

Flexible Working and Families

Prior to the election, the Conservatives and Liberal Democrats were both vocal in declaring their support for family friendly measures and it has now been confirmed in the Queen's Speech that the right to request flexible working will be extended to all employees to enable them to balance their work and family lives more effectively.

It is also likely that measures including the right to share parental leave will be considered during the course of this parliament.

Equal Pay

It was announced in the Queen's Speech that equal pay would be promoted and a range of measures taken to end discrimination in the workplace. Extending the right to request flexible working and promoting gender equality on the boards of listed companies are two possible ways in which the Government may achieve this aim.

Men still in charge in the City

The House of Commons Treasury Committee has published a new report criticising the lack of diversity in senior roles in financial institutions and, in particular, the fact that women only make up 9% of those on boards of FTSE 100 banks. The report, "Women in the City", found that only 1-2% of executive directors were women, although it also recommended that the representation of women in the City would be improved more efficiently by a change in the mindsets of those in the City rather than specific legislation to tackle the issue.

Anna Jackson

e: anna.jackson@rlb-law.com

t: 020 7227 6756

This briefing is for guidance purposes only. RadcliffesLeBrasseur accepts no responsibility or liability whatsoever for any action taken or not taken in relation to this note and recommends that appropriate legal advice be taken having regard to a client's own particular circumstances.