

EMPLOYMENT UPDATE



Reynolds Parry Jones
SOLICITORS

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Sheffield Council Liable for Third Party Harassment

An Iranian residential social worker in a home for troubled children aged 11-15 years old has succeeded in bringing a race discrimination claim against his employer, Sheffield City Council, after being subjected to racial abuse from a girl in his care described only as A.

A's behaviour was described as extremely challenging. Whilst she was abusive and offensive to most staff, she particularly mocked the claimant on racial grounds. She said that he should go back to his own country, that she would like to blow up the whole of Asia and regularly mocked his accent. The abuse by A went on for nearly two years when the claimant, who had become increasingly upset by A's behaviour, went off sick.

His claim was essentially that the Council did not do enough to prevent A racially harassing him. The Council argued that A would have mocked any strong accent "if she thought it would have the desired effect" and the Tribunal had concluded that A was adept at targeting vulnerabilities of staff regardless of race. However, the EAT concluded that it was irrelevant that her underlying motive might not have been connected to his race on the basis that her behaviour was inherently racist.

The case is a warning to employers who have received complaints of third party discrimination, even if such complaints are from professionals.

Representation at Hearings

A school sessional music assistant ("G") who allegedly had an inappropriate relationship with a 15 year old pupil was lawfully denied legal representation at an internal disciplinary hearing.

The Supreme Court held that Article 6 of the European Convention on Human Rights (right to legal representation in determination of civil rights) could require an employee to be legally represented.

However, it was a subsequent hearing by the Independent Safeguarding Authority which would determine G's ability to practice his future profession and not the School disciplinary hearing. He was therefore only entitled to representation by a colleague or trade union representative.

Ex Gratia Payments

An employee who was entitled to 3 months notice was only given 4 days notice. In her dismissal letter she was told that she would receive an "ex gratia payment equivalent to 3 months salary". The employer only paid the 3 month ex gratia payment and not 3 months notice in addition.

The Employment Appeal Tribunal held that the wording of the dismissal letter was unambiguous and the employer was in breach of contract for only paying the ex gratia sum and not the employees notice pay in addition.

The EAT went on to say that if the letter was ambiguous, then the wording would have been interpreted in favour of the employee in any event!

Diamond Jubilee Holiday

The Government has announced that an additional public holiday will take place on Tuesday 5th June 2012 and the traditional late May Bank Holiday is to be moved to Monday 4th June to enable a four day Diamond Jubilee celebration.

Whilst the announcement is great news for employees, it is not so great for some employers who will have to pay their staff an additional day's holiday pay. Whether employers will be worse off or not will depend upon the wording of their employment contracts.

Employee's £3,000 Cost Award

A female administrator at Nottingham Trent University has lost her sex discrimination claim against the University but has also had costs of £3,000 awarded against her after the 'facts' on which she based her case were found to be false.

The Court of Appeal found her evidence to have been inconsistent. She initially claimed that she was keeping her pregnancy secret for the first three months but subsequently said that her pregnancy was common knowledge. The costs may have been higher but for the fact that the employee was about to apply for benefits.

No General Power to Apportion

The Employment Appeal Tribunal has held that Tribunals have no general power to apportion liability between guilty respondents in employment proceedings (e.g. an employer and one or more employees).

The correct position is that a claimant may (if they choose) pursue one respondent for the entire award of damages (normally the employer). It is then open to the targeted respondent to claim a contribution from fellow co-respondents.

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