

# EMPLOYMENT UPDATE



Reynolds Parry Jones  
SOLICITORS

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## Employment Status and Illegality

In the case of *Connolly v Whitestone Solicitors* a solicitor was offered employment with the firm but subsequently asked to be treated as self-employed for tax purposes. He was paid a fixed profit share of £9,000 per quarter but he was under an obligation to perform work personally and the firm paid for his practicing certificate and training. He subsequently left the firm and submitted a claim for unfair dismissal on the basis that he was an employee.

A Tribunal initially held that the solicitor had deliberately misled HMRC about his employment status and it would therefore be contrary to public policy to allow the solicitor to consider the unfair dismissal claim.

He appealed to the Employment Appeal Tribunal who decided that there was insufficient evidence before the Tribunal to conclude that the solicitor had deliberately misled HMRC and the matter was remitted to a separate Tribunal to properly consider the evidence in this respect.

We will therefore need to wait for the Tribunal to decide. However, in this case the parties were solicitors who had carefully considered Mr Connolly's employment status. In many cases, it may well not be obvious whether someone is employed or self employed.

## The Effect of Summary Dismissal after Notice Has Been Given

In *Alders v M-Choice* the Employment Appeal Tribunal had to decide what should happen when an employer summarily dismissed an employee when they were already on garden leave and under notice of termination.

Miss Alders was employed on 1st February 2010 and was contractually entitled to six months notice. On 26th July she was put on garden leave and told that her employer was "ending the work relationship as per February 1st 2011 at the latest."

This meant that she had been employed for a year so Miss Alders submitted a claim for unfair dismissal on 11th January 2011. On 21st January 2011 the Company then wrote to Miss Alders informing her that her employment was being terminated with immediate effect. She subsequently submitted a fresh claim form claiming that she had been unfairly dismissed for asserting a statutory right to bring an unfair dismissal claim. Such a claim does not require one years' service as is usually the case with unfair dismissal claims.

The EAT held that her effective date of termination was 21st January when her employment was terminated with immediate effect. Her unfair dismissal claim for asserting a statutory right was valid but the EAT ordered that the matter be referred to a fresh Tribunal to decide whether she was actually dismissed for asserting a statutory right or whether there was some other reason.

## Conspiracy Theory?

A Principal Intelligence Analyst working for South Yorkshire Police was not unlawfully dismissed on grounds of his philosophical belief.

His beliefs were that the 9/11 and 7/7 terror attacks were 'false flag' operations authorised by the UK and US governments and that the media was controlled by a 'global elite seeking a new world order'.

The Tribunal accepted that his beliefs were genuinely held and related to weighty and substantial aspects of humanity. However, his claim failed in that his beliefs did not meet minimum standards of coherence and cohesion and were "absurd".

## Minimum Wage Whilst Asleep?

The EAT has held, on the facts, that a pub manager who slept at the premises overnight was not entitled to the national minimum wage during sleeping hours.

On the facts she had no responsibilities during the night and her position had to be contrasted with that of a night watchman or night sleeper in a residential home who do have responsibilities during such times.

## Notice of Appeal - Missing Page

The EAT has held that an appeal submitted before the appeal deadline but with a page missing should not be struck out.

The essential dispute was understandable from what had been submitted and the obvious clerical error was amended as soon as it was discovered.

The EAT will not always be so amenable however and each case will depend on its particular facts.

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