

EMPLOYMENT UPDATE



Reynolds Parry Jones
SOLICITORS

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When Ignorance of the Law is an Excuse!

It is generally the case that an employee must bring a claim for Unfair Dismissal within 3 months of the termination of their employment. An exception to this is if it was not "reasonably practicable" to do so. However, this exception was always construed narrowly.

In the case of *Bodha v Hampshire Health Authority* (1982) the Employment Appeal Tribunal (EAT) held that not submitting a claim within the 3 month period because an employee was waiting for the outcome of an internal appeal was not, in itself, a sufficient reason. However, in the recent case of *John Lewis v Charman* (2011) an employee who also missed the 3 month time limit because he was waiting for the outcome of an internal appeal was allowed to proceed with his claim.

The difference, according to the EAT, was that in the *John Lewis* case the employee in question was reasonably ignorant of the relevant time limit. Indeed the court ruled "there is an obvious good sense in a party awaiting the outcome of an internal appeal before resorting to legal proceedings."

The *John Lewis* ruling is a warning to employers who have deliberately attempted to delay internal appeals to try and make employees miss key deadlines. However, the *John Lewis* exception will not be available to employees who have sought advice from "skilled advisors".

Religious Discrimination Rulings

In the Case of *Cherfi v G4S Security Services* the EAT has held that an employers refusal to allow a Muslim employee time off on a Friday to attend prayers in congregation at a mosque was justified.

The employee in question was a security guard who was contracted to work on a Friday. He had been offered an alternative Monday to Thursday shift pattern with the option of working Saturday or Sunday as an alternative but the employee refused to work at the weekends. Instead he started taking sick leave, holiday and unauthorised leave on Fridays until this was no longer tolerated by his employer.

The employer had provided a prayer room on site and would have been subject to financial penalties if it failed to ensure adequate staffing on site. The need for employees to be on site had been objectively justified and the requirement was a proportionate means of achieving a legitimate aim. The employees claim for religious discrimination therefore failed.

In a separate case, an employment Tribunal has held that a ban on prison officers carrying weapons did not discriminate against Sikh prison officers wishing to wear a ceremonial dagger (a kirpan). Whilst it put certain initiated Sikhs at a disadvantage the ban was a proportionate means of achieving a legitimate aim: namely the need for high levels of safety and security in prisons.

Compensation for Future Losses

The Court of Appeal has held that employees will only be awarded career long losses in exceptional cases. In the vast majority of cases Tribunals will have to predict when a dismissed employee might notionally secure alternative employment on similar terms.

It was conceded that predictions of Tribunals in relation to such matters will often be inaccurate. However, predicting future losses was the only real method of giving employers and employees some finality in the resolution of employment disputes.

Redundancy Scoring Ruling

The EAT has ruled that employers redundancy scoring should only be scrutinised by Appeal Tribunals in exceptional circumstances (e.g. bias or clear mistake).

An employee who applied for the position of Senior Transport Manager had been marked with 2 out of 2 for "Ability to plan routes." In relation to his application to the more junior Transport Manager post he had been given 1 out of 2 for "Ability to assist with route planning."

The employee claimed that this scoring was illogical as the two categories were identical. However, the EAT refused to overturn the ruling of the Tribunal that had heard the evidence first hand.

Intern Entitled to Minimum Wage

An unpaid intern working for a publishing company each day from 10am to 6pm has been held to be a worker and was therefore entitled to the national minimum wage. She resigned and issued a grievance after she was promised payment for her work in the future which was subsequently reneged upon.

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