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**College Student Required to Work Late Succeeds in Age Discrimination Claim**

Mentions of age discrimination may bring to mind images of grey-haired employees being treated less favourably than their younger colleagues. As a case concerning a teenage college student showed, however, young people enjoy the same legal protection as their elders (Sangster v Honest Burgers Ltd).

The student was delighted to find his first job as a restaurant waiter. He was contracted to work 16 hours a week, later reduced to 11 hours, and objected when his manager quite often required him to work between 11pm and midnight. He explained that his college schedule did not enable him to work so late.

After reading up on his employment rights, he mentioned to his manager that he was, because of his age, entitled to a half-hour rest break during each shift. He also pointed to the statutory limit on his working hours, including night work. He said that his manager told him that his schedule was an inconvenience and that he was required to prioritise his work over his studies. He was ultimately dismissed.

Upholding his age discrimination claim, an Employment Tribunal noted that he had to be up early, and not exhausted, in order to attend college. Contrary to Section 19 of the Equality Act 2010, the requirement to work late put him at a particular disadvantage because of his age. His dismissal followed on from his assertion of his statutory rights and was thus automatically unfair.

The student said that he had taken the job in order to help out his family and to fund his way through college. The loss of his employment led to health and emotional problems and deprived him of his sense of self-worth. His employer, who did not submit a defence to his claim, was ordered to pay him a total of £11,160, including £8,500 in compensation for injury to his feelings.

We can assist you in dealing with any matters relating to age discrimination. Contact **<<CONTACT DETAILS>>** for expert advice.

**Cooling Off Periods and Retraction of Oral Resignations – Guideline Ruling**

Large employers often have 'cooling off' policies in place that address the common situation of employees orally announcing their resignation in a stressful moment and subsequently having second thoughts. As an Employment Tribunal (ET) ruling showed, however, such polices, once adopted, must be honoured (Grant v Asda Stores Ltd).

The case concerned a supermarket worker who was under strain at home due to her onerous caring responsibilities for sick and elderly relatives. During an understaffed night shift, she became so stressed that she thought she was having a heart attack. She told a manager that she was resigning and would not be back.

In line with her employer's policy, she was sent a cooling off letter the following day that gave her seven days in which to change her mind before her resignation would become effective. She and her trade union representative had a number of conversations with managers thereafter but she was eventually informed that her resignation had been processed, bringing her employment to an end.

Ruling on her unfair dismissal claim, the ET found that the employer was entitled to treat her oral resignation as resulting from a rational and conscious decision on her part. The cooling off letter, however, wrongly specified a deadline that afforded her only six, rather than seven, days to retract her resignation.

In upholding her complaint, the ET found that she had a contractual right to change her mind at any time during the seven-day cooling off period. She had done so in a telephone call to her line manager on the final day before the deadline expired. By his words, the manager indicated his understanding that her resignation was being retracted. Her employer was ordered to pay her a basic award of £7,064 and a compensatory award of £6,039.

Contact **<<CONTACT DETAILS>>** for individual advice on unfair dismissal claims.

**Employment Dispute Settlement Precludes Subsequent Victimisation Claim**

The vast majority of employment cases end in compromise, thus doing away with the need for a public hearing. As a Court of Appeal ruling made plain, however, great professional care is required in drafting settlement agreements in order to ensure that they do not themselves become the focus of further dispute (Arvenescu v Quick Release (Automotive) Ltd).

The case concerned a man whose race discrimination complaint against a company for which he worked for about a month was compromised on confidential terms. He accepted a sum of money in what was described as full and final settlement of any claim he might have against the company arising directly or indirectly out of, or in connection with, his period of employment or its termination.

About two months after the settlement was signed, he brought a further claim against the company, alleging victimisation. He contended that he had been turned down for a position with one of its subsidiaries because he had previously brought the race discrimination claim. He asserted that the company, through its close links to the subsidiary, was responsible for him not being offered the position.

Following a preliminary hearing, however, the victimisation claim was struck out by an Employment Tribunal. That ruling was subsequently upheld by the Employment Appeal Tribunal on the basis that the claim fell within the scope of the settlement agreement and had thus already been compromised.

Ruling on the man's challenge to that outcome, the Court found that the victimisation claim did not arise directly or indirectly out of the relevant period of employment. In dismissing his appeal, however, it noted that the settlement agreement was drafted more widely than that. The victimisation claim was indirectly connected to, or linked with, his previous employment by the company and thus fell within the ambit of the agreement.

The Court was reinforced in its view by the context in which the settlement came to be reached. Its wording indicated a clear intention to settle all claims arising out of the man's employment that might exist as at the date on which the agreement was signed, whether or not they were known about at that time. The victimisation claim related to events that pre-dated the agreement and the underlying purpose of the settlement was to compromise all such existing claims.

It is vital to have legal advice and representation when settlements are being negotiated in employment disputes. Contact our expert team for guidance.

**Foster Panel Chair an Independent Officeholder, Not an Employee**

The distinction between an independent officeholder and an employee could hardly be more important but is sometimes difficult to discern. That was certainly so in the case of a woman who served for many years as an independent chair of a local authority's fostering panel (Thompson v Dorset Council).

After her appointment was terminated, the woman lodged an Employment Tribunal (ET) complaint against the council, alleging unfair dismissal and breach of contract. The council denied her claims and, at a preliminary hearing, asserted that the ET had no power to hear her case in that she was not an employee.

Ruling on the matter, the ET found that the independent nature of her appointment did not preclude her from being the council's employee. She was subject to regular performance reviews and tax was deducted at source from her attendance fees and expenses claims. The council provided her with the equipment needed for her work; she was expected to undergo training and she was obliged to provide her services personally, in that there was no suggestion that she could arrange a substitute to perform her role.

On the other hand, she did not receive holiday or sick pay and was free to give up her appointment at any time. She received fees, rather than a salary, and was not integrated into the council's employment structure. She was at liberty to, and did, undertake similar roles with other local authorities. There was an expectation that she would attend a certain proportion of panel meetings, but she was under no obligation to do so. She had provided no evidence of the council taking action against her or any other panel member in respect of non-attendance.

Overall, the ET found that the mutuality of obligation between her and the council, and the level of control that the council exerted over her, were insufficient to give rise to an employer/employee relationship. She was properly viewed as an independent officeholder. Her lack of employment status meant that her claims had to be rejected for want of jurisdiction.

Contact **<<CONTACT DETAILS>>** for individual advice on contentious employment status matters.

**Marital Discrimination – ET Failed to Ask the Right Question**

To treat employees unfavourably because they are married amounts, unsurprisingly, to unlawful discrimination. However, as one case showed, proving a causal link between such treatment and marital status can be highly demanding (Ellis v Bacon and Another).

The case concerned a bookkeeper who was married to the principal shareholder of the company for which she worked. After their relationship ended in acrimonious divorce, she was dismissed by the company's managing director (MD). An Employment Tribunal (ET) subsequently upheld her complaint that the MD had discriminated against her because she was married.

In its decision, the ET found that the MD had sided with her husband in making false allegations against her and dismissing her on spurious grounds. She was wrongly accused of misusing the company's IT system and, at one point, a wholly baseless complaint was made against her to the police. She was stripped of her directorship and was not paid dividends that were due to her.

In upholding the MD's challenge to the ET's ruling, however, the Employment Appeal Tribunal (EAT) found that the ET had failed properly to address the issue of whether it was her marital status that was the cause of her unfavourable treatment, as opposed to the fact that she was married to the shareholder.

The question was not whether she was badly treated because she was married to a particular person. The ET had failed to construct an appropriate comparator or to ask itself whether a hypothetical person in a close relationship with the shareholder, but not married to him, would have been treated any differently.

The EAT reached its conclusion with a heavy heart. The ET's conclusion that she had been very badly treated by the MD, amongst others, could not be challenged. It had nevertheless failed to address its mind to the true issues in the case and its finding that the MD had subjected her to marital discrimination, contrary to Section 13(4) of the Equality Act 2010, could not stand.

We can advise you on all aspects of employment law. Contact **<<CONTACT DETAILS>>** for expert guidance.

**Pressurised Delivery Driver Succeeds in Disability Discrimination Claim**

The pressure under which the UK's legion of delivery drivers work is well known. As an Employment Tribunal (ET) ruling showed, however, workers' disabilities must never be ignored when assigning them a reasonable workload (Bannister v DPD Group UK Ltd).

A delivery driver who was disabled by learning difficulties, severe hearing impairment and dysarthria, a speech disorder, was dismissed following a report that he had been filmed throwing delivery boxes from the back of his lorry. On the day of the incident, he had been detailed to deliver 133 parcels, including 89 to one of his employer's premier customers. The latter delivery was subject to a tight deadline.

Upholding his disability discrimination claim, the ET noted that he had to load his vehicle without assistance and was under a great deal of pressure. The truck did not have a tailgate to raise and lower parcels, and a broken ladder made it hard for him to gain access to the vehicle. It was frustration that led him to behave in the way he did and, as the deadline approached, he was reduced to tears.

The ET found that his strange behaviour in throwing the boxes to the ground was occasioned by his hearing, speech and learning difficulties, which caused him to become frustrated and confused in pressurised and stressful situations. His disabilities significantly influenced his unfavourable treatment, which took the form of suspension, disciplinary proceedings and, ultimately, dismissal.

The employer's plea that his dismissal was justified in order to protect its reputation and relationship with its priority customers was rejected. Proportionate steps short of dismissal could have achieved those legitimate aims. He had expressed remorse and the only reasonable and proportionate conclusion for the employer to reach was that the incident was a one-off and unlikely to recur.

In also finding that the employer failed to make reasonable adjustments to cater for his disabilities, the ET found that he was treated like any other driver. Given the size and resources of the employer, reasonable steps could have been taken to relax deadlines, modify his route or reduce the number of his deliveries.

The procedures followed were unreasonable and unfair. His personnel files were not considered; he was given insufficient notice of a rushed and minimal investigation and he was denied a suitable representative at the disciplinary hearing. The amount of his compensation would be assessed at a further hearing, if not agreed.

The risk of being drawn into costly discrimination disputes can be greatly reduced by having in place adequate provisions and policies to support disabled employees. Our employment lawyers can advise.

**Senior Executive Leaving? Informal, Oral Agreements are a Recipe for Dispute**

The circumstances in which senior executives depart from companies in which they have played a lynchpin role can be highly contentious. A High Court case provided a prime example of a lack of legal formality feeding the flames of dispute (Failbetter Games Ltd v Kennedy).

The case concerned the resignation of a chief executive officer (CEO) from a company he founded. The company contended that, prior to his departure, an oral agreement had been struck whereby he would sell a number of his shares back to the company for £360,000. It was further alleged that he had agreed to gift certain other shares to his co-founder and to certain of the company's employees.

The CEO denied that any agreement for the sale and gift of his shares had been reached. Even if there were such an agreement, he asserted that it was subject to contract and not binding. On that basis, he resisted parting with his shares and sought to conduct himself as a continuing member of the company. He convened meetings and sought to appoint himself as a director and to change the company's registered office.

The company's response was to launch proceedings against him, seeking an order of specific performance that would hold him to the terms of the alleged agreement. It obtained an interim injunction which, pending a trial of the action, forbade him from exercising or purporting to exercise rights as a member, director, officer, representative, employee or agent of the company.

At a preliminary hearing, the company applied to strike out elements of the CEO's defence by which he made criticisms of the company's conduct following his departure and asserted, amongst other things, that it would be unfair to require him to part with his shares at an undervalue. In alternatively seeking summary judgment on the relevant parts of his defence, the company contended that they had no bearing on the issues in the case and afforded him no real prospect of defeating the claim.

Rejecting the application, however, the Court was not satisfied that it would be right to shut out the CEO from relying on the entirety of his pleaded defence. It was important for the trial judge to hear all relevant evidence and it was possible that questions of fairness and conduct post-dating the alleged agreement might influence his decision whether or not to grant specific performance.

We can advise you on all aspects of employment law. Contact **<<CONTACT DETAILS>>** for expert guidance.

**Waitress Accused of Stealing from the Till Succeeds in Unfair Dismissal Claim**

A genuine and honest belief that an employee is guilty of gross misconduct is not, by itself, a viable defence to an unfair dismissal claim. An Employment Tribunal (ET) made that point in awarding compensation to a restaurant waitress who was sacked after being accused of pilfering money from the till (Malowana v Cribben Southampton Ltd).

On reviewing the restaurant's accounts, its owner said he discovered that till receipts were down by modest but round figures on a number of days. Referring to his diary entries, he asserted that the waitress was the only member of staff working on all of those days. She vehemently denied being a thief but was dismissed following a disciplinary process.

Upholding her unfair dismissal claim, the ET accepted that the owner held a genuine belief that she had stolen money from the till. However, it was not satisfied that his belief was a reasonable one or that the findings against her were based upon a reasonable investigation.

The ET accepted her account of the restaurant as a somewhat chaotic workplace in which till discrepancies were a not infrequent occurrence. The allegations she faced were inconsistent with the diary entries disclosed to the ET and were based on an assumption that cash shortfalls were rare on days when she was not on duty. She was awarded more than £4,000 in compensation, including in respect of 26 weeks' loss of pay.

Expert employment law advice is vital when incidences of gross misconduct are alleged. Contact our team for guidance.

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