

Woodcock v Cumbria Primary Care Trust IDS 917

Mr Woodcock was told that he was formally at risk of redundancy after his application for a new job created as a result of a restructure, was unsuccessful. When it became clear that no alternative employment was likely, Mr Woodcock was invited to a meeting on 10 April 2007 to start the redundancy process. Difficulties in arranging a mutually convenient date meant that the meeting could not take place until 6 June 2007.

The Trust believed that Mr Woodcock was attempting to delay the process to ensure that his employment ended after his 50th birthday on 17 June 2008, when he would be entitled to an enhanced pension (the additional cost of which was somewhere between £500,000 and £1,000,000). Therefore, before individual consultation with Mr Woodcock took place, in order to protect the Trust's position and taxpayers' money, the Trust wrote to Mr Woodcock on 23 May 2007 advising that, unless alternative employment could be found, his employment would terminate on 22 May 2008.

No alternative position materialised and following consultation Mr Woodcock was made redundant receiving a redundancy payment of £230,428. Mr Woodcock issued proceedings for age discrimination.

A tribunal held that issuing the notice of dismissal before the consultation meeting had been less favourable treatment on grounds of age. The decision was motivated by the realisation that notice given after Mr Woodcock's 49th birthday would expire after his 50th birthday when he would be entitled to an enhanced pension. However, the Trust had justified its actions. The legitimate aim was to bring about dismissal for redundancy and to avoid the additional costs to the Trust of Mr Woodcock attaining the age of 50 before the end of his notice period, thus being entitled to enhanced payment. Mr Woodcock's dismissal without consultation (which would have achieved nothing) was a proportionate means of achieving that aim.

The EAT agreed. The decision to give notice of dismissal before the employee's formal redundancy consultation meeting was a proportionate means of achieving the legitimate aim of avoiding a large additional cost, and of preventing him from receiving a benefit, which he had no legitimate right to expect. In addition, this was a 'costs plus' issue, since Mr Woodcock's role had become genuinely redundant in early 2006, and the Trust had already been generous in not giving one year's notice of dismissal at that time.

Keeping You One Step Ahead



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Bullimore v Potheary Witham Weld Solicitors [2011] IRLR 18

A tribunal found that a firm of solicitors had provided a poor reference concerning a past employee to her prospective new employer because she had previously pursued a claim of sex discrimination against it. The reference referred to the sex discrimination claim, the claimant's "poor relationship" with the firm's partners and that she could be "inflexible as to her opinions". As a result, the prospective new employer withdrew its job offer to the claimant. A tribunal found the actions of both the past employer and prospective new employer to be unlawful victimisation. The tribunal held that the unlawful actions of the prospective new employer broke the chain of causation and the past employer was not liable to compensate the claimant for her future loss of earnings caused by the withdrawal of the job offer. It limited compensation to an injury to feelings award.

The EAT allowed the appeal. The EAT ruled that it was evidently foreseeable that the prospective employer would react to the poor reference as it did, and that its reaction was a direct and natural consequence of the supply of the information, even though it was unlawful.

The EAT stated that as a matter of public policy and fairness the previous employer should be liable for the direct consequences of its actions. It noted that the provision of damaging references is a fairly common form of victimisation and a remedy against the recipient of the reference will not always be available (as their response will not always be unlawful). It would therefore be most unsatisfactory if a claimant who lost the opportunity of employment as the result of such a reference were unable to recover substantial damages from his or her former employer.

The EAT remitted the case back to the tribunal to consider the claimant's loss of earnings claim.

The practical lesson of the EAT's decision in this case is that an employer who victimises a former employee by giving them an adverse reference for a reason connected with the employee having brought discrimination proceedings can be found to be liable for loss of earnings if a new prospective employer then withdraws a job offer as a result.

Russell v Transocean International Resources Ltd [2011] IRLR 24

The central principle considered in this case, which impacts on shift arrangements where employees work so many weeks 'on' and then so many weeks 'off', is whether or not holiday under the Working Time Regulations must be taken at a time when the employee would otherwise be working.

The employees worked on offshore installations for two weeks, followed by two weeks onshore. Time spent onshore is known in the industry as 'field-break'. When they worked offshore, the employees worked "12 hours on, 12 hours off". Occasionally work-related activities took place during field-break weeks, such as training, appraisals, grievance and disciplinary hearings, medical assessments and offshore survival courses. However, it was accepted that time spent on these activities was minimal. Other than these commitments, the workers were free to do as they chose for a total of 26 field-break weeks every year.

The employees asked to take their annual leave during offshore working periods but were refused. The Court of Session held that the employers' requirement that the employees take their annual leave during onshore field-breaks fulfilled their obligations under the Working Time Directive and the Working Time Regulations.

The Court confirmed the general principle that a worker must have at least four remunerated weeks of the weekly cycle in which he is free from work commitments and, on that basis, an employer cannot refute the fundamental entitlement to four weeks of annual leave by stipulating that non-working days within the weekly working cycle (typically Saturdays and Sundays) must be treated as annual leave. In this case, however, since the employees were only required to actually work for 26 weeks per year, that did not contravene the basic 48-week cap on the number of working weeks permitted in a year.