

Network: 3 December 2007

Age Discrimination: Cases stayed pending the outcome of the “Heyday” challenge
(*Johns v Solent SD Ltd*)

The President of the Employment Tribunals in England and Wales has ordered that all age discrimination claims brought by employees aged 65 or over who have been forced to retire, must be put on hold pending the outcome of the Heyday case.

The charity Age Concern has argued that the Employment Equality (Age) Regulations 2006 contravene European law by allowing employers to retire employees against their wishes, at the default retirement age of 65 years. Age Concern has brought a court action in the hope of getting the legislation declared unlawful (commonly known as the ‘Heyday’ case).

Two weeks ago, the Employment Appeal Tribunal (EAT) gave its decision in the case of *Johns v Solent SD Ltd*. The EAT allowed an appeal against a Tribunal’s decision to dismiss claims of age discrimination and unfair dismissal brought by a woman, who was retired by her employer when she reached the age of 65. The EAT concluded that the case should have been put on hold (or ‘stayed’) until the outcome of the Heyday challenge is known.

Following the EAT’s decision in *Johns*, the President of the Employment Tribunals has directed that all similar cases should also be stayed. His direction applies to claims that have already been lodged and those that are lodged some time in the future.

Solent SD Ltd has been given permission to appeal the EAT’s decision and the President will review his direction once that appeal has been determined.

Transfer of undertakings: Additional rights are not transferred
(*Jackson v Computershare Investor Services*)

The Court of Appeal has held that the Transfer of Undertakings Regulations (“TUPE”) do not give employees additional rights so as to improve their contractual position.

In 2004 following the sale of the business that employed Mrs Jackson, she transferred to Computershare Investor Services (“CIS”). Mrs Jackson was made redundant in 2005. The Employment Tribunal found that following the 2004 TUPE transfer, she was entitled to enhanced severance pay, something which Computershare only made available to employees who had joined it pre-2002. She had joined her previous employer in 1999 and on the basis of the Regulations had continuity of service. The EAT overturned that decision, and Mrs Jackson appealed.

The Court of Appeal dismissed her appeal finding that the Regulations do not give a transferred employee access to benefits, other than those to which the employee was entitled before the transfer of the undertaking. It safeguards existing rights. So for the question of enhanced severance pay, the Regulations could not be used to “miraculously transform” Mrs Jackson into someone who joined Computershare pre-2002 when, as a fact, she joined Computershare in 2004. The original Tribunal was wrong and she was not entitled to the enhanced payment.

Often employers wish to harmonise contract terms after a transfer. However this case confirms that, pursuant to the TUPE Regulations, employers are not required to improve contractual terms of transferring employees.

Presentation of claims in the Tribunal: Claim submitted 8 seconds late rejected

(Miller - v - Community Links Trust Ltd)

The Employment Appeal Tribunal dismissed an appeal against the decision to reject a claim that was received 8 seconds too late.

The case confirms the Tribunals' strict approach to the issue of time limits. The Chairman confirmed that public interest must be served in ensuring that the business of the EAT is conducted expeditiously and its resources are used effectively. The argument put to the Tribunal in the first instance was that it was not reasonably practicable to submit the claim in time, a claim rejected by all three members. The Claimant had been represented by a Mr Neckles, a second year Law Student, who actually submitted the claim at 23:59:59 on the last day for service. The claim was received by the Tribunal at 00:00:08 and was therefore 8 seconds late.

The Tribunal rejected Mr Neckles' arguments that he had a medical condition making it difficult for him to keep to deadlines. The Tribunal also asserted that there was fault on the part of the adviser and as such the claim should be against the adviser. It should not be down to the Tribunal to exercise its discretion because of a representative's negligence.

The Tribunal also sent a warning to unqualified and unregistered representatives by referring Mr Neckles to the Regulated Claims Management Service. Mr Neckles had accepted payment for his advice as an unqualified and unregistered adviser something which is now forbidden by statute.

If you have any questions about these or other employment issues please call Heather Cowley on 01582 731161.

The information given in this newsletter was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.