

# THOMAS • MORE • CHAMBERS

## EMPLOYMENT LAW NEWS ROUND UP

FEBRUARY 2003

### SEMINAR

The Employment Law Group are holding the deferred seminar on Damages in Employment Claims on Tuesday, 29 April 2003 at 5.00pm. Further details are set out at the end of this Newsletter.

### EAT NEW PRACTICE DIRECTION

The Employment Appeal Tribunal has issued new practice directions with respect to its own practice and procedure - The Employment Appeal Tribunal Practice Direction (Employment Appeal Tribunal Procedure) 2002, see (2003) IRLR 65. The new Practice Direction came into force on 9 December 2002 and supersedes all previous Practice Directions.

### UNFAIR DISMISSAL

The imposition of a final written warning is capable of amounting to a repudiatory breach of the contract of employment on the part of the employer. Further, a decision taken on the basis of a significant and relevant authority which was not drawn to the attention of the parties is not an automatic ground of appeal. The question is whether, if the authority had been drawn to the attention of the parties, they might have made submissions which may have led to a different result: **Stanley Cole (Wainfleet) Ltd v Sheridan** (2003) IRLR 52, EAT.

### PUBLIC INTEREST DISCLOSURE

A "qualifying disclosure" within the meaning of section 43B(1) of ERA 1996 does not necessarily have to be factually accurate. For there to be a "qualifying disclosure" it must have been reasonable for the employee to believe that the factual basis of what was disclosed was true and that it tends to show one or more of the of the six circumstances identified in section 43B(1) (a criminal offence being committed, a failure to comply with any legal obligation, etcetera). It is therefore possible for an employee to make a "qualifying disclosure" even if the factual basis of what was disclosed was not correct provided that it was reasonable for the employee to believe that the allegations made were factually accurate: **Darnton v University of Surrey** (2003) IRLR 133, EAT. In determining the basis upon which an employer acted in victimisation claims it is necessary to consider the mental processes which caused the employer so to act. It is therefore necessary in a section 47B ERA 1996 claim to establish that the fact that the protected disclosure had been made caused the employer to act in the way complained of. Merely to show that "but for" the disclosure the act would not have occurred is not sufficient: **London Borough of Harrow v Knight** (2003) IRLR 140, EAT.

## DISABILITY DISCRIMINATION

In determining whether a person was disabled within the meaning of the 1995 Act, it was not material to consider how the impairment at issue was caused. In the present case, therefore, the fact that the applicant's depression was caused by alcoholism did not mean that her case fell within reg. 3(1) of the Meaning of Disability Regulations 1996, which provides that alcohol addiction is not to be treated as an impairment: **Power v Panasonic UK Ltd** (2003) IRLR 151, EAT.

## PENSIONS

Payment received for overtime which was voluntary and non-contractual did not count as part of an employee's final remuneration for pension purposes: **London Borough of Newham v Skingle** (2003) IRLR 72.

## TRANSFER OF UNDERTAKINGS

A transfer within the meaning of the 1981 Regulations took place when P&O took over Initial's contract to provide a petroleum delivery service to Shell, notwithstanding that the petroleum delivery industry is asset-reliant and there was no transfer of tangible assets. The ECJ in *Oy Liikenne v Liskojarvi* did not lay down a principle that in all cases of asset intensive industries the absence of a significant transfer of such assets would always lead to the conclusion that no transfer had taken place. The judgment in that case, read as a whole, makes it apparent that the ECJ was reaffirming the principle that all relevant factors have to be weighed in determining whether a transfer had taken place: **P&O Trans European Ltd v Initial Transport Services Ltd** (2003) IRLR 128, EAT.

## HEALTH AND SAFETY

The burden imposed upon an employer by section 40 of the Health and Safety at Work Act 1974 to prove that it was not reasonably practicable to do more than was done to ensure that employees were not exposed to risks to their health and safety is compatible with the presumption of innocence set out in Article 6(2) of the ECHR: **Davies v Health and Safety Executive** (2003) IRLR 170, CA Crim. Div.

## SEMINAR

### DAMAGES IN EMPLOYMENT CLAIMS

**Tuesday, 29 April 2003, 5.00pm**

This 2 hour early evening seminar provides a practical and comprehensive update of the principal elements that need to be considered in determining the value of unfair dismissal, wrongful dismissal and discrimination claims. It further examines the issues of costs in Employment Tribunals and the often complex field of unauthorised deductions from wages. Attendance should materially assist practitioners in employment law in determining whether to accept cases on a no win no fee basis and in determining a realistic approach to making and accepting offers of settlement.

This seminar is specifically designed for practitioners who have a limited to medium level of experience in this area. It will be presented by barristers who regularly appear in employment cases. The agenda is set out below.

**This seminar carries 2 hours CPD accreditation.** If you or another member of your organisation would like to attend please contact our junior clerk, Lena Connolly, on 020 7404 7000 or [elg@thomasmore.co.uk](mailto:elg@thomasmore.co.uk)

We look forward to hearing from you.

## **AGENDA**

4.50 - 5.00pm	Enrolment, tea and coffee
5.00 - 5.10	Introduction
5.10 - 5.45	Assessing the Value of Unfair and Wrongful Dismissal Claims
5.45 - 6.00	Costs in Employment Tribunals
6.00 - 6.10	Break
6.10 - 6.40	Valuing Discrimination Claims
6.40 - 7.00	Unauthorised Deductions from Wages
7.00 - 7.10	Questions and Answers

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