

# THOMAS • MORE • CHAMBERS

## EMPLOYMENT LAW NEWS ROUND UP

JUNE 2002

The Employment Law Group of Thomas More Chambers is holding a CPD accredited seminar on **Transfer of Undertakings - Government Reform Proposals and Recent Case Law Developments** to be held on Tuesday, 13 August 2002 at 5.00pm. Further details are set out at the end of this Newsletter.

### APPEALS

Employment appeals based on perversity should only succeed if an overwhelming case is made out that the first instance tribunal reached a decision which no reasonable tribunal, on a proper appreciation of the evidence and law, would have reached. Further, appeal tribunals must resist attempts by the parties to present appeals on facts as raising questions of law: **Yeboah v Crofton** TLR 20.6.02, CA.

### TRANSFER OF UNDERTAKINGS

There was a relevant transfer within the meaning of the Transfer of Undertakings Regulations when there was a change in hospitals providing inpatient care within a NHS Trust area and the contractors took over the provision of cleaning and catering notwithstanding that there was no significant transfer of assets and none of the relevant employees were taken on by the new employers. Whether the majority of employees are taken on by the new employer is only one of the facts which must be considered in making an overall assessment of the facts characterising the transaction: **RCO Support Services v Unison** (2002) IRLR 401 CA.

### EQUAL PAY

A scheme under which an employer makes available nursery places to employees is to be regarded as a "working condition" within the meaning of the EC Equal Treatment Directive rather than as "pay" within the meaning of Article 141 of the EC Treaty, even though the cost of the nursery places was partly borne by the employer: **Lommers v Minister van Landbouw, Natuurbeheer en Visserij** (2002) IRLR 430 ECJ.

### JURISDICTION

The Court of Appeal has set out detailed guidelines setting out the principles governing the service of documents by post in **Consignia plc v Sealy**, TLR 3.7.02, CA. Employment Tribunals do not have jurisdiction to award damages for breach of contract in cases where negotiations for the agreement in question began before the actual date of termination but were not finalised until after that date: **Miller Bros and F P Butler Ltd v Johnston** (2002) IRLR 386, EAT.

### CONDUCT/STRIKING OUT/COSTS

In determining whether to make an order for costs against an applicant, the applicant's means and ability to pay are not factors which a Tribunal should take into account:

**Kovacs v Queen Mary & Westfield College** (2002) IRLR 415, CA. Where an advocate's behaviour is aberrant and offensive, a hearing should not be aborted until a serious endeavour has been made to defuse the situation. The Tribunal can either ignore the remarks or point out to the advocate the potential consequences of his behaviour and invite him, if the remarks cannot be justified, to withdraw them. If the remarks are withdrawn there is no reason why the case cannot go on. Even if the remarks are not withdrawn, the Tribunal may still need to consider whether it cannot continue the hearing. If the advocate persists in defying the Tribunal without arguable justification, the Tribunal can invite the Attorney General to consider proceeding against him for contempt of court: **Bennett v London Borough of Southwark** (2002) IRLR 407, CA.

## HOLIDAY PAY/WORKING TIME

Accrued holiday pay was properly calculated by reference to the number of working days and not days per year: **Leisure Leagues UK Ltd v Maconnachie**, TLR 3.5.02, EAT. An assessment of the length of a live-in careworker's average working day was critical when deciding the nature and amount of the work carried out for the purposes of entitlement to the national minimum wage: **Walton v Independent Living Organisation Ltd**, TLR 25.3.02, EAT.

## SEMINAR

### Transfer of Undertakings - Government Reform Proposals and Recent Case Law Developments

Tuesday, 13 August 2002

5.00pm

The Government has proposed wide ranging reforms to the Transfer of Undertakings Regulations. This seminar examines those reforms and explains how they will impact upon employers in both the public and private sectors. Further, information and analysis will be provided on recent judicial developments in this complex area of employment law. 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 ours CPD accreditation.** Unfortunately numbers are strictly limited and availability is on a first come first served basis. Attendance is limited to two delegates per organisation. 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 - 5.25 A Statutory Definition of Transfer of Undertaking

5.25 - 5.45 Transfers within the Public Administration

5.45 - 6.05 Occupational Pensions

6.05 - 6.15 Break

6.15 - 6.30 Other Proposed Reforms

6.40 - 7.00 Case Law Developments

7.00 - 7.10 Questions and Answers' Conclusion

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