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## EMPLOYMENT LAW NEWS ROUND UP

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### INJURY TO FEELINGS AWARDS IN UNFAIR DISMISSAL CLAIMS

The Court of Appeal, by a majority of 2:1, has held that section 123 ERA 1996, which defines the compensatory award in an unfair dismissal case as "such amount as the tribunal considers just and equitable in all the circumstances..." is sufficiently wide to allow compensation to be ordered for non pecuniary losses caused by unfair dismissal: *Dunnachie v Kingston upon Hull City Council*, 26.2.04 TLR, CA.

### PUBLIC INTEREST DISCLOSURE COMPENSATION

The guidelines for compensation for injury to feelings in discrimination cases also apply to whistle blowers who have been subjected to a detriment as a result of making a protected disclosure: *Virgo Fidelis Senior School v Boyle* 26.2.04 TLR, EAT.

### EQUAL PAY

A woman whose employment contract has not been renewed and who is made immediately available to her previous employer through another undertaking to provide the same services cannot bring an equal pay claim using as a comparator a man still employed by the woman's previous employer. As there is no single source determining pay and conditions there is no body which is responsible for the inequality and which could restore equal treatment. A requirement, however, of being employed under an employment contract as a precondition for membership of a teachers pension scheme, set up by State legislation, is not applicable unless it can be objectively justified in circumstances where it can be shown that among the teachers, who are "workers" within the meaning of Article 141, there is a much higher percentage of women than men who are excluded as a result: *Allonby v Accrington and Rossendale College* (2004) IRLR 224, ECJ.

### TERRITORIAL JURISDICTION

The Employment Tribunal did not have jurisdiction to hear an applicant's claim in circumstances where he worked on Ascension Island for a company registered and having its Head Office in England and his wages were paid in Sterling into an English bank. The repeal of section 196 ERA 1996 did not confer on employees the right not to be unfairly dismissed wherever they worked providing the employer was based within the United Kingdom. The right, under section 94(1), not to be unfairly dismissed applies to dismissal from employment in the United Kingdom: *Lawson v Serco Ltd* (2004) IRLR 206, CA.

### ILLEGALITY OF CONTRACT

The Court of Appeal has held that not every illegality in the performance of a contract of employment will render the contract unenforceable. Per Waller LJ "... an analysis needs to be done as to what the parties' intentions were from time to time. If the contract was unlawful at its formation or if there was an intention to perform the contract unlawfully as at the date of the contract, then the contract will be unenforceable. If at the date of the contract the contract was perfectly lawful and it was intended to perform it lawfully, the effect of some act of illegal performance is not automatically to render the contract unenforceable. If the contract is ultimately performed illegally and the party seeking to enforce takes part in the illegality, that may render the contract unenforceable at his instigation. But not every act of illegality of performance even participated in by the enforcer will have that effect. If the person seeking to enforce the contract has to rely on his illegal action in order to succeed then the court will not assist him. But if he does not have to do so, then in my view the question is whether the method of performance chosen and the degree of participation in that illegal performance is such as to "turn the contract into an illegal contract":

**Colen v Cebrian (UK) Ltd (2004) IRLR 210, CA.**

## DISABILITY DISCRIMINATION

A narrow interpretation of the duty of reasonable adjustment has been adopted by the Court of Session in **Archibald v Fife Council (2004) IRLR 197**. In this case the Applicant, a road sweeper, was no longer able to walk and was therefore disabled from her job. She unsuccessfully applied for redeployment in a number of administrative positions. The Court held that the duty of adjustment does not extend to offering a disabled person a quite different job which involves a fundamental change in the nature of the employment.

## TRANSFER OF UNDERTAKINGS

Where part of a business is transferred, there is no requirement that the part transferred was identifiable as a discrete and identifiable economic entity prior to the transfer in order for the TUPE Regulations to apply: **Fairhurst Ward Abbotts Ltd v Botes Building Ltd 26.2.04 TLR, CA.**

## JURISDICTION

ETs do not have jurisdiction to determine whether an employee is entitled to statutory sick pay. The exclusive and exhaustive jurisdiction for the determination of disputes as to entitlement lies with the officers of the Inland Revenue Board and, on appeal, with the Commissioners: **Taylor Gordon & Co Ltd v Timmons (2004) IRLR 180, EAT.**

## DATE OF TERMINATION

The date of termination where an employee accepted by fax an employer's repudiation of his contract of employment is the date when the fax was received, not any later date when it was read or acted upon: **Potter v R J Temple plc 11.2.04 TLR, EAT.**

## PRACTICE AND PROCEDURE

The 42 day time limit for instituting an appeal to the EAT runs from the sending of the decision, even if it is not delivered: **Sian v Abbey National plc (2004) IRLR 185, EAT.**

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