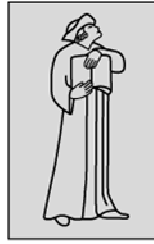


THOMAS · MORE · CHAMBERS



7 Lincoln's Inn Fields London WC2A 3BP

T 020 7404 7000 F 020 7831 4606

DX 90 Chancery Lane E clerks@thomasmore.co.uk

www.thomasmore.co.uk

EMPLOYMENT LAW NEWSLETTER

SUMMER 2006

UNFAIR DISMISSAL

Dismissal may be for an unfair reason even where the employee has committed misconduct. The question is whether the misconduct was the real reason for dismissal and it is for the employer to prove that. Once, therefore, an employee has raised, with proper evidence, the issue that the operative reason for the dismissal was pique or antagonism, it is for the employer to rebut this: **ASLEF v Brady** [2006] IRLR 576, EAT. Dismissal for refusal to sign up to an unreasonable restrictive covenant falls within "some other substantial reason" under section 98(1)(b) ERA 1996. The question posed by section 98(1)(b) is whether the employer's reason is of a kind such as to justify the dismissal, ie. whether the reason falls within a category of reason that is not excluded by law as grounds for dismissal or whether the reason for dismissal could be a substantial other reason. If, however, the reason for dismissal could, in law, form a legitimate ground for dismissal, it is then necessary to proceed to the second stage of considering whether the employer, under section 98(4)(a), has acted reasonably in treating that reason as a sufficient reason for dismissal: **Willow Oak Developments Ltd v Silverwood** [2006] IRLR 607, CA.

PERSONAL LIABILITY

A tribunal was entitled to find that a manager was jointly and severally liable to pay compensation for acts of discrimination, notwithstanding that some of the acts were carried out by other managers, in circumstances in which the manager could be regarded as having unlawfully aided the discriminatory acts within the meaning section 42 SDA 1975 by consciously encouraging the discrimination: **Gilbank v Miles** [2006] IRLR 538, CA.

WHISTLE BLOWING

The protection provided to whistle blowers under the Public Interest Disclosure Act 1998 extends to claims by former employers alleging detriment suffered after they have left employment: **Woodward v Abbey National plc (No 1)** 11.7.06, TLR, CA.

PRACTICE AND PROCEDURE

The power to strike out a Tribunal claim should only be exercised if the unreasonable conduct amounts to a persistent and deliberate disregard of ordered procedural steps or has made a fair trial impossible. Even if these conditions are fulfilled, the claim should only be struck out if it is proportionate to do so: **Blockbuster Entertainment Ltd v James** [2006] IRLR 630, CA.

TRANSFER OF UNDERTAKING

Whether an employee who has been dismissed prior to transfer but whose appeal has yet to be heard is transferred pursuant to reg. 5 of TUPE depends upon whether the appeal is successful and reinstatement is ordered. The employee's employment is preserved only for the purpose of determining the appeal. If the appeal is successful and the dismissal is set aside, the dismissal vanishes and the employee continues in employment but with the transferee as a result of the transfer: **G4S Justice (UK) Ltd v Anstey** [2006] IRLR 588, EAT.

VICTIMISATION

The protection proffered by section 2(1)(c) RRA 1976, where the victimisation is "by reason that the person victimised has...otherwise done anything under or by reference to this Act in relation to the discriminator or any other person under this Act", is necessarily wider than that provided by the more restricted circumstances set out in the other subsections. In the present case it applied to the Claimant's participation in an interview concerning an allegation of race discrimination by a work colleague even though the Claimant made no suggestion in the interview that she had witnessed discrimination: **National Probation Service for England and Wales v Kirby** [2006] IRLR 508, EAT.

The Thomas More Chambers' Employment Law Group provides a full complement of employment law services, ranging from representation, for both employers and employees, at all tribunal and court levels; legal advice on all areas of employment law; and drafting (from contracts of employment to settlement agreements). If you would like further details of the services provided and/or information about our fee structure, please contact our Employment Law Clerk, Nick Bryant, on 020 7404 7000 or email clerks@thomasmore.co.uk.

Disclaimer: *The information and any commentary on the law contained in this bulletin are provided free of charge for information purposes only. Please feel free to disseminate this Newsletter to colleagues. No responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by any member of Thomas More Chambers. The information and commentary does not, and is not intended to, amount to legal advice and the writers do not intend that it should be relied upon. You are strongly advised to obtain specific personal advice from a lawyer about any legal proceedings or matters and not to rely on the information or comments in this bulletin.*

SUMMER 2006

**THOMAS MORE CHAMBERS
EMPLOYMENT LAW GROUP**