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TUPE: Two years' service needed for unfair dismissal claim

MRS Environmental Services Limited v Marsh and Harvey (Court of Appeal 9 July 1996)

The Court of Appeal has decided that employees dismissed in connection with a transfer of an undertaking must have 2 years' service before they can bring a claim for unfair dismissal. In the case of MRS Environmental Services Limited v Marsh and Harvey, in which Thompsons were instructed by the GMB, the Court of Appeal reversed the 1995 decision of the Employment Appeal Tribunal in Milligan and Bailey v Securicor.

Fortunately the court's decision has limited significance and only applies to employees dismissed before 26 October 1995 because the Government passed a new law on 26 October 1995 requiring all employees to have 2 years' service before bringing claims on a transfer related dismissal.

Marsh and Harvey were employed in Castle Point Borough Council's housing maintenance Direct Service Organisation, which was contracted out to MRS Environmental Services. Only dismissed employees with more than 2 years' service were paid compensation by MRS.

The issue in the Court of Appeal revolved around Regulation 8(1) of the TUPE Regulations. This says that where an employee is dismissed for a reason connected with a transfer "that employee shall be treated for the purposes of Part V of the Employment Protection (Consolidation) Act 1978 as unfairly dismissed".

Thompsons argued that this meant the employee should be treated as unfairly dismissed without the need to establish a qualifying period. We also argued that European law gave an absolute right not to be unfairly dismissed and that right could only be limited if the UK legislation expressly excluded specific categories of employee.

The Court of Appeal accepted the contractor's argument that all the provisions of Part V must be satisfied and employees only had a right to claim unfair dismissal if they had the necessary 2 years' qualifying service.

The Court of Appeal's decision is flawed in a number of respects. The Court said that if the intention of the TUPE regulations was that employees need not have 2 years' service to bring a claim for a TUPE dismissal, the law would have said so. The court did not take fully on board the distinction between the Trade Union dismissals legislation which says that where an employee is dismissed for Trade Union reasons "the dismissal should be regarded as unfair" whereas TUPE states that the "employee shall be treated as unfairly dismissed".

> The Court of Appeal's decision is flawed in a number of respects

Treating the dismissal as unfair means that each employee would still have to satisfy the other requirements, including qualifying service, unless specific provision was made. In contrast, stating that the employee shall be regarded as unfairly dismissed means that the employee is treated as having satisfied all requirements for unfair dismissal, leaving only remedies to be decided. This is supported by comments in the leading judgment in the House of Lords' decision of Litster (1990).

The Court of Appeal failed to deal adequately with the implications of Regulation 13 of the TUPE Regulations. This provides that the unfair dismissal provisions in TUPE do not apply where the employee ordinarily works outside the UK. If the Court of Appeal's interpretation of TUPE was correct, why have this provision? Employees who ordinarily worked outside the UK would not have a right to claim unfair dismissal in any event.

Redundancy: testing times

Johnson v Peabody Trust [1996] IRLR387

The Employment Appeal Tribunal recently considered whether the "contract" test or "function" test was the appropriate test for determining whether someone is redundant. The "contract" test involves a literal reading of the terms of the contract while the "function" test looks at the contract *and* the surrounding circumstances.

In Johnson the EAT found that the Industrial Tribunal had correctly applied the contract test. This case is of wide interest as it concerns an employee who had a flexibility clause in his contract.

Mr Johnson was employed as a roofer by the Peabody Trust. He was also required to carry out multi-trade operations where possible. If there was no roofing work he carried out other work, mainly plastering.

It was decided that nine people would have to be made redundant, including one roofer, and Mr Johnson was selected as the roofer to go. By this time, he was carrying out multi-trade operations for more of the time than he was roofing. On a function test he would therefore be a multi-trade operative.

Mr Johnson complained that his dismissal was unfair. In dismissing his complaint the IT found that he had been dismissed by reason of redundancy in that he was employed as a roofer and the employer's requirements for employees to carry out roofing work had diminished.

On appeal the EAT held that the tribunal was correct in holding that Mr Johnson was employed as a roofer despite the flexibility clause. The EAT also held that in applying the "contract" test the contract should not be read in an over-technical or legalistic way but should be looked at in a commonsense manner in order to ascertain the basic task which the employee was contracted to perform.

Johnson should be read together with the earlier case of Bass Leisure Ltd v Thomas [1994] IRLR 104. Mrs Thomas was employed by Bass Leisure at their Coventry depot. Her contract of employment provided a right for the company to transfer employees either temporarily or permanently to a suitable alternative place of work.

The Coventry depot was closed and after a trial period at the Erdington depot Mrs Thomas resigned claiming a redundancy payment. The EAT held that Mrs Thomas was dismissed by reason of redundancy and closing down the Coventry depot amounted to a cessation of the employers business "in the place" where she was employed.

The EAT held that the question about the place where the employee is employed is primarily a factual one. The only relevant contractual terms are those which go to evidence or define the place of employment and its extent, rather than to make provision for the employee to be transferred from one "place" to another.

Both cases demonstrate tribunals looking at the contract and the factual situation. In neither case was the tribunal prepared to accept a broad definition of the "job" or "place of work" based on the wide wording of the contract. In both cases the tribunal attempted to establish the underlying reality of the situation: what was Mr Johnson's basic task; where did Mrs Thomas actually work?

Changing direction on parental leave: update

We reported in the last edition on the Directive to implement the Parental Leave Agreement. There have been some significant changes between the draft of the Directive and the final version which has now been passed.

The final version omits the guarantee that the Directive should not be used as an excuse to reduce the general level of protection and omits the obligation on member states to determine the range of penalties for infringing the parental leave requirements which must be "effective, commensurate with the infringement and must constitute sufficient deterrent".

These changes may be more cosmetic than real because general European Law principles mean that the existing protection should not be reduced and that sanctions must be effective.

A worrying development is the removal of the "non-discrimination" provision which prohibited any discrimination based on "race, sex, sexual orientation, colour, religion or nationality".

The provision was removed from the Directive and replaced by a weak statement in the preamble recognising the "importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinion and creed".

This dilution sends a negative political message, particularly as reference to discrimination on grounds of sexual orientation has now been removed.

Procedure defective, not conclusive

Westminster City Council v Cabaj [1996] IRLR 399

In Cabaj the Court of Appeal looked at the effect of a breach of a contractual disciplinary procedure on the fairness of a dismissal. The court held that failure by an employer to observe their own contractually enforceable disciplinary procedure need not lead an Industrial Tribunal to conclude that a dismissal was automatically unfair.

The question the tribunal had to determine under S.57(3) of the EPCA was not whether the employer acted reasonably in dismissing the employee, but whether the employer acted reasonably or unreasonably in treating the reason shown as a sufficient reason for dismissal.

Mr Cabaj was dismissed by Westminster and exercised his right to appeal as set out in the Council's disciplinary code. The disciplinary code was expressly incorporated into his contract of employment and provided for an Appeal's Tribunal comprising three members of the Council.

Mr Cabaj's appeal, heard by only two members of the Council, was dismissed.The Employment Appeal Tribunal found that Mr Cabaj had a contractual right to have an appeal heard by a tribunal composed of three members of the Council. For the appeal to be heard by only two members "was so fundamental a defect in the dismissal process" that the only conclusion the Industrial Tribunal could reach, if the case was returned to it for decision, was that the dismissal was unfair. The EAT held that Mr Cabaj was unfairly dismissed.

Contractual right to appeal hearing

The Court of Appeal held that the EAT was right to regard the defect in the composition of the Appeal Tribunal as a significant failure rather than merely a procedural error. But the Court of Appeal found that the EAT was wrong to hold that the failure to observe the contractual appeals procedure meant that the decision to dismiss was automatically unfair.

The Court said the case must be sent back to the IT which was bound to consider whether, in providing an appeal's tribunal consisting of only two members, the employers had impeded the employee in demonstrating that the real reason for his dismissal was not sufficient. It should also consider the reasons why the employers decided to dismiss without having observed the requirements of their disciplinary code.

Changing payments

Candler v. ICL Systems Services

Mr Candler and 13 others were employed as customer service engineers working under contracts which could require them to work at inconvenient and unsocial hours for which they received additional payment for TSB ("telephone standby"). ICL gave the engineers two weeks' notice of a cut in the TSB payment.

The contracts of employment only allowed a variation of terms with 26 weeks' notice. An exception was the requirement to work the inconvenient hours triggering the TSB payments which could be ended with four weeks' notice. ICL therefore argued that TSB payments could be altered with only four weeks' notice.

The employees, represented by Thompsons, claimed that under the Wages Act 1986, the TSB rates could not be altered until the 26 week period was up. On appeal from the Industrial Tribunal they argued that it was wrong to imply a term which allowed the employers to change payments simply because the requirement to work the inconvenient hours could be terminated with four weeks' notice.

The EAT held that the IT was wrong. There was no material difference between the employer reducing the rate of pay for the standard 37 hour week and reducing the rate of pay for TSB. 26 weeks' notice was needed in both cases. Each employee was entitled to be paid the difference between the new lower rate for TSB and the higher rate for the 26 weeks' notice period.

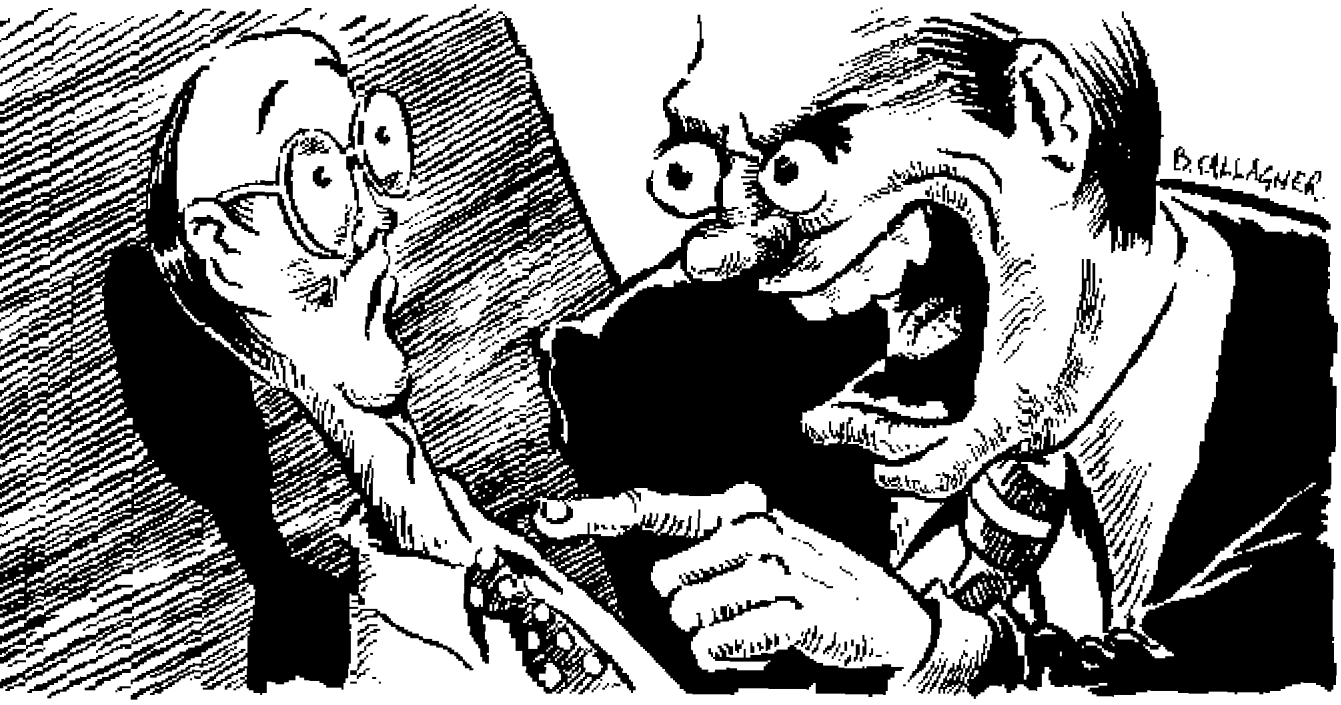
Still waiting on two years' judgment

The House of Lords was due to hear the Government appeal from R v Secretary of State for Employment ex parte Seymour-Smith last month. This follows the Court of Appeal ruling that the two year qualifying period for bringing unfair dismissal claims was indirectly discriminatory against women.

The UK Government had been unable to justify the two year threshold. But the court didn't strike down the qualifying period and its status has been left unclear as a result.

Since the Court of Appeal judgment in 1995 many hundreds of cases have been lodged at Industrial Tribunal, but kept on hold awaiting the outcome of the Lords' judgment. The wait is still not over...the Lords' appeal has been adjourned until October.

Bullying in the workplace



Since Tom Brown's Schooldays, bullying has traditionally been seen as a problem associated with schools and children. But the spotlight is now being turned on workplace bullies through union campaigns which have led to greater media interest.

Now that workplace bullying is being exposed as a major problem, case law is likely to develop considerably and there may be future legislation. How can the law help now?

Sex and race harassment and bullying is well established unlawful discrimination under the Sex Discrimination Act 1975 and Race Relations Act 1976. Unlawful sex or race discrimination covers not only treatment of a sexual or racial nature, but any other less favourable treatment on grounds of sex or race.

The European Union's Code of Practice and Recommendation on Sex Harassment provides clear and comprehensive guidelines on steps to be taken to prevent the risk of sex harassment in the workplace and ways in which procedural safeguards can be established. The Code has been crucial in establishing policies at work to protect the dignity of men and women from gender based treatment. In IT cases employers will have great difficulty in saying that they have taken reasonable steps to prevent acts of harassment if they have not complied with the Code.

> Workplace bullying can have devastating consequences

Those who suffer less favourable treatment, harassment and bullying for having raised a complaint of sex or race harassment are further protected through the anti-victimisation provisions of both the Race Relations and Sex Discrimination Acts. The protection is extended to circumstances where the employer thinks an employee might raise a complaint of unlawful discrimination - either on their own or another's behalf - and includes protection for witnesses who come forward in discrimination cases.

But what of workplace bullying which does not have either a sex or racial aspect? Boss against worker or even bullying by fellow workers? There is no specific legal protection.

For legal rights and remedies it is necessary to rely on general contractual and employment law principles.

Workplace bullying will often involve a breach of an implied term and condition of employment, most obviously the mutual obligation of trust and confidence. This includes the obligation not to be humiliated, intimidated or degraded, failure to be treated with dignity and consideration and failure to deal with employee's complaints and treat them with sufficient gravity.

Failure to provide reasonable support to enable a worker to carry out his duties without disruption or harassment from fellow workers will also be a breach of the implied term of

trust and confidence. Other relevant implied terms will be the obligation to provide a safe work place and safe and competent colleagues.

The principles of **constructive and unfair dismissal** apply to workplace bullying. The bullying must amount to a breach of contract and the breach must be sufficiently serious to justify the employee resigning either for a one-off act or the last in a series of incidents.

The employee must leave in response to the breach and must not delay too long or may be deemed to have waived the breach.

The consequences of workplace bullying can be devastating for employees, affecting their physical and mental health, self esteem and work performance.

Depending on the nature of the bullying, **personal injury claims** for physical assaults and psychological injury may be possible. The employer will be liable for acts of bullying or harassment by employees which takes place in the course of their employment.

The current legal framework looks neither to cure nor prevention but rather compensation after the event. MSF's Guidance on the Adoption of Policies on Bullying at Work suggests defining bullying in its various forms and including bullying as a disciplinary offence. It also suggests procedures for the prevention and investigation of acts of bullying.

Thompsons is working with MSF on a Private Member's Bill which would provide specific legal protection against bullying and new methods to make the legislation easier to enforce.

The Labour Party commitment, in the Road to the Manifesto, to establishing basic minimum standards of fairness at work, properly enforced,may also give scope for positive legislation to safeguard the dignity of workers and provide a legislative framework to tackle the workplace bully.

Two years' service not needed if you insist on statutory rights

Mennell v Newell & Wright (Transport Contractors) Ltd [1996] IRLR 384

Bullying and fear at work can stem from misunderstandings about legal rights and especially about the two years' service rule normally needed to allow an unfair dismissal claim. What is less well known is that employees are protected from day one of employment against dismissal for asserting a statutory legal right .

This protection comes from section 60A of the Employment Protection (Consolidation) Act 1978, introduced in 1993, which makes it automatically unfair to dismiss someone for 'asserting a statutory right'. The statutory rights referred to include the written statement of particulars, itemised pay statement, guarantee payments, maternity rights, Wages Act claims, union victimisation or time off, unauthorised check off deductions and political fund opt outs.

Section 60 was introduced as a partial response to employers who dismissed employees with less than two years' service who 'caused trouble' by insisting on legal rights, for example, a written statement of employment terms. But what does it mean in practice - and what protection does it give?

Employee asserts right to refuse deductions from pay

The protection applies where the employee has brought a claim to enforce a right or has alleged that the employer has infringed a right. It is automatically unfair to dismiss the employee for making the claim or allegation.

The first appeal case on this law has now been reported. Mr Mennell, who had less than two years' service, was asked to sign a changed contract which gave his employers the right to make deductions from pay. He refused and was sacked.

The Employment Appeal Tribunal said this could be a dismissal for asserting a statutory right. A threat of dismissal to vary the contract so an employer could make deductions is an infringement of the right not to have deductions made without consent.

It did not matter that no deduction had been made or that no right had actually been infringed. In fact it was not even strictly necessary to establish that the employee actually had any right to infringe.

The key question is whether the employee, acting in good faith, asserted or claimed to have a relevant statutory right. It does not matter whether the employee had the right, let alone whether it was infringed.

Mennell's case has been sent back to the Industrial Tribunal to consider these points and to decide the issue which is likely to prove the real stumbling block for employees: was the employee's assertion of a statutory right the reason for the dismissal?

Swings and roundabouts

Secretary of State for Employment v Clarke CA IDS Brief 568 July 1996
Caruana v Manchester Airport Plc EAT [1996] IRLR 378
Rees v Apollo Watch Repairs EAT (unreported)

Since the Gillespie judgment in the European Court of Justice there has been considerable uncertainty whether (and when) there will be appropriate circumstances for a comparison to be made between a pregnant woman or a woman on maternity leave and a man on sick leave. In Gillespie,the ECJ ruled that pregnant women or women on maternity leave are in a special position which requires them to be afforded special protection. This special protection status means they cannot compare their position with either that of a man or with a woman actually at work.

The arguments have almost come full circle. After the introduction of the Sex Discrimination Act employers argued - initially with some success - that discrimination against pregnant women and women who had recently given birth could not be unlawful sex discrimination. They argued that there could be no comparison with a man as only women can become pregnant and give birth.

Gillespie reaffirmed the "protected status, no comparison" view and a further endorsement has now been given in the case of Secretary of State for Employment v Clarke (Court of Appeal 15 May 1996). The Clarke case predates the implementation of the Pregnant Workers Directive and is a claim against the Secretary of State for Employment for a failure to make a payment from the National Insurance Fund when her employer became insolvent.

Ms Clarkes's employer went into liquidation in 1991 while she was on maternity leave and she was dismissed without a payment in lieu in spite of her entitlement to 12 weeks' notice. Her colleagues, who were also dismissed and not paid, were able to claim a payment for their statutory notice period (subject to the limit on a week's pay) from the Secretary of State.

The law has since been changed to comply with the Pregnant Workers Directive so that women on maternity leave who are dismissed are entitled to their notice period in the same way as employees absent from work on sick leave or holiday.

Mrs Clarke's claim was brought under Article 119 of the Treaty of Rome. Her complaint was that the Employment Protection (Consolidation) Act 1978 excluded women absent from work due to pregnancy and child birth from claiming from the National Insurance Fund. She sought to have this dis-applied to enable her to claim from the fund in the same way her colleagues did.

The EAT found in her favour, but the Court of Appeal overturned the decision. It held that pregnancy is not an illness and that women taking maternity leave are in a special position, not a comparable situation, to men. There appear to be two possible routes that remain open for arguing for maternity pay rights comparable to those of men on sick pay.

Firstly under Coyne v ECGD [1981] IRLR 51 and Reay v Sunderland Health Authority (unreported), the line of authorities pre-dating Gillespie which were argued solely under the Equal Pay Act 1970. Secondly through the gap apparently left by Gillespie for claims equivalent to contractual sick pay by reference to other justified absences from work.

But the indications from Clarke are that it will become increasingly difficult to argue the "sick man comparison". In cases concerning treatment of pregnant women governed by the Sex Discrimination Act and Equal Treatment Directive - rather than pay and contractual terms - it was thought that the issue has most definitively been decided by Webb v EMO (in the ECJ [1994] QB718):

'There can be no question of comparing the situation of a woman who finds herself incapable, by rea-

son of pregnancy... of performing the task for which she was recruited with that of a man similarly incapable for medical or other reason...dismissal of a pregnant woman recruited for an indefinite period cannot be justified on grounds relating to her inability to fulfil a fundamental condition of her employment contract'.

Any other interpretation would make the Equal Treatment Directive ineffective. But interesting emphasis was placed by the ECJ on the fact that Mrs Webb was employed for an indefinite period.

When Webb v EMO was referred back, the House of Lords suggested the possibility of a distinction where a woman was on a fixed term contract and her absence due to pregnancy would make her unavailable for the whole of the length of the contract.

In Caruana, Manchester Airport unsuccessfully tried to argue that the non-renewal of a fixed term contract for a woman on maternity leave, because she would be unavailable for work at the beginning of the renewed contract, fell outside the Webb judgment.

The EAT resoundingly rejected the argument. if they had found for Manchester Airport, it would be a positive encouragement to employers to offer or impose a series of short term contracts to try and avoid the impact of the discrimination laws. It is a welcome relief that this potential loophole has been so firmly closed.

It is also significant that Mrs Caruana was not an employee for the purposes of unfair dismissal, but self employed. She came within the wider definition of 'employee' for the Sex Discrimination Act as she was engaged personally to perform work for the airport.

But the case of Brown v Rentokil Ltd (House of Lords, unreported) may yet confuse the issue. Although Mrs Brown was dismissed as a result of a pregnancy related illness, the Scottish Court of Session held that there had been no discrimination as she had been treated in the same way as a man absent through illness.

The House of Lords has referred the question of whether her dismissal was in breach of the Equal Treatment Directive to the ECJ. Brown pre-dates the Pregnant Workers Directive which provides for a pregnancy related dismissal to be automatically unfair under the Employment Protection (Consolidation) Act.

But what of the situation where the maternity cover replacement is more acceptable? The EAT in Rees v Apollo Watch Repairs Plc had no difficulty in finding that it was still unlawful sex discrimination.

There is no break in the chain of causation. Miss Rees' pregnancy led to the appointment of a replacement who, but for Miss Rees' pregnancy, would not have been engaged and no comparison between them would ever have been made and Miss Rees would not have been dismissed.

Equal treatment and benefits

Meyers v Adjudication Officer 1996 1CMLR 461ECJ

The European Court of Justice has ruled that equal treatment principles must be applied to benefits paid by virtue of employment. In Meyers the assessment of entitlement to Family Credit had to take account of childcare costs.

The Applicant, a single mother, applied for Family Credit for herself and her three-year-old daughter. The Application was rejected because her income after deductions was too high to entitle her to Family Credit. She appealed on the grounds that childcare costs should be deducted before assessing her net income.

She said that not allowing the deduction of childcare costs for the purposes of calculating her net income discriminated against single parents since it was much easier for couples to arrange their working hours so that children could be cared for by one parent or the other. As most single parents were women this constituted indirect sex discrimination against women, an argument which the Social Security Appeals Tribunal accepted.

The Social Security Minister asked the ECJ to decide whether Family Credit was covered by the Equal Treatment Directive.

The Government argued that Family Credit should be excluded because it had nothing to do with either access to employment, as it was paid to those already in work, or with working conditions governed by the contract of employment. The ECJ decisively rejected the Government's arguments.

It was held that a scheme of benefits could not be excluded from the scope of the Directive solely because it was part of the National Social Security system. The ECJ said that the legislation referred to by the UK Government was aimed at ensuring that families did not find themselves worse off in work than they would be if they were not working. The benefit was intended to keep poorly paid workers in employment and so was concerned with access to employment. In fact the availability of the benefit would encourage workers to take employment they may otherwise be unable to afford.

Compliance with the fundamental principle of equal treatment pre-supposed that a benefit such as Family Credit, which was linked to an employment relationship, constituted a working condition within the meaning of the Directive. To confine the scope of the Directive purely to working conditions in the contract of employment, would remove situations directly covered by an employment relationship from the Directive.

Time's up at six months

Preston v Wolverhampton Health Care NHS Trust, Secretary of State for Health and others (EAT, unreported)

September 1996 marks the second anniversary of the European Court of Justice six pack of pension equality cases. Amongst those were the cases of Vroege and Fisscher which held the right to join an Occupational Pension Scheme fell within Article 119 of the Treaty of Rome and was not affected by the limits on retrospective claims for pensions equality set out in the Maastricht Treaty and Barber v Guardian Royal Exchange [1990] IRLR 240.

As a result more than 60,000 IT applications have since been lodged by part time workers who have at some stage during their employment been denied access to an Occupational Pensions Scheme. Of those 60,000 all but 22 cases have been stayed in tribunal while the case of Mrs Preston and 21 others are being pursued as test cases to establish a number of preliminary points, mainly to do with the time limits for bringing a claim, and the extent to which back payments of pensions contributions can be claimed.

It is important not to lose sight of the main achievement of the Vroege and Fisscher cases and Bilka-Kaufhaus before them and the subsequent amendments to UK legislation. The cases made it more difficult for employers to deny part time workers access to an Occupational Pension Scheme and remedied a significant and longstanding injustice.

But the Employment Appeal Tribunal judgment in Preston has followed the principles set out in Biggs v Somerset County Council [1995] IRLR 452 and severely limited the impact of the ECJ judgments in respect of past discrimination.

The findings are: **The claims must be brought within six months** of the end of the contract of employment which denied access to the pension scheme, with no discretion to extend the time limit (the Equal Pay Act 1970 time limit). **There is no extension of time** for public sector workers by relying on the failure of the Government to implement the equal pay directive, since claims could have been brought under Article 119.

The six month time limit is neither discriminatory nor incompatible with community law and nor does the time limit make it impossible in practice or excessively difficult to exercise rights under community law. **The six month time limit runs** from the end of the particular contract of service in force, not from the end of employment with the employer after a succession of fixed term contracts with no genuine breaks. The continuity of employment principles in the EPCA cannot be read across to the Equal Pay Act.

The limit on back pay to two years before starting Tribunal proceedings contained in the Equal Pay Act applies to part time pensions claims. This severely limits the practical benefits of the pension equality rulings. The EAT held this was not incompatible with community law as it amounts to a reasonable limit on the retrospective effect of a claim and is not an upper limit on compensation. But this conflicts with the EAT case of Levez v T.J. Jennings (Harrow Pools Ltd) (unreported), which reached a different decision and has referred direct to the European Court of Justice.

The remedy for the failure to permit a part timer to join the pension scheme is a declaration of rights of access. By holding that there is no entitlement to claim damages for loss of benefits payable under the scheme it means that back payments of employee's contributions may have to be paid by the employee as well as the employer. **Male part time workers** have the same rights as female part time workers.

The EAT refused to refer any questions on the judgment to the ECJ. The Preston case has been appealed to the Court of Appeal to obtain a reference to Europe to join the Levez case.

Biggs will not progress beyond the Court of Appeal as leave to appeal to the House of Lords has been twice refused and there is no further right of appeal. If the Preston EAT judgment is upheld, more than 80% of the 60,000 claims waiting at Industrial Tribunals will fail.

Any claim brought by part time workers who became eligible to join the company pension scheme more than two years before starting proceedings, will fail. So too will all claims brought by part time workers who left employment more than six months before their claims were lodged.

The refusal to permit separate contracts to be counted as continuing for the purposes of Equal Pay Act time limits will also have a significant effect on cases brought by workers particularly in the education sector.

THOMPSONS

HEAD OFFICE, CONGRESS HOUSE
TEL 0171 637 9761

BIRMINGHAM
TEL 0121 236 7944

BRISTOL
TEL 0117 941 1606

CARDIFF
TEL 01222 484 136

ILFORD
TEL 0181 554 2263

LEEDS
TEL 0113 244 5512

LIVERPOOL
TEL 0151 227 2876

MANCHESTER
TEL 0161 832 5705

NEWCASTLE-UPON-TYNE
TEL 0191 261 5341

NOTTINGHAM
TEL 0115 958 4999

SHEFFIELD
TEL 0114 270 1556

STANMORE
TEL 0181 954 0941

STOKE-ON-TRENT
TEL 01782 201 090

ASSOCIATED OFFICES

EDINBURGH
TEL 0131 225 4297

GLASGOW
TEL 0141 221 8840

EDITED BY **DUNCAN MILLIGAN**
DESIGNED BY **DW DESIGN**, LONDON
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