

Employment law cases



**ASSIGN
BUSTER**

Employment Law.

Jack

As a general rule the TUPE Regulations 1981 enable a contract of employment of an employee to be transferred over to the buyer of a business in the event of a sale from one employer to another means that the new employer must preserve the regulations of the old employer. However an important limitation on the scope of these regulations is the exclusion of changes of control in a company through share purchase. This is because the identity of the employer does not change: the employer is the same company as before, even though there has been a change of controlling interest. This means that Jack cannot refuse to work for the company on account of the change of control and neither can Jack as a trade union member enforce the TUPE regulations in relation to the employer's duty to inform and consult with the representatives of the workforce.

Sophie

It is assumed that Sophie's complaint relates to the fact that Claudio is a man whom is doing a similar job to hers and being paid more and therefore she will be considering bring an action under the Equal Pay Act 1970. Under this act Sophie, as a female applicant is allowed to compare her terms and condition with those of " a man in the same employment" who is employed either like work, work rated as equivalent or work of equal value to hers. This means that Claudio must be employed by the same employer – which we know to be true and that he must be shown to be employed in employment which has " common terms and conditions of employment...

generally” to the work that Sophie does. Whether or not this is considered to be the case will depend very much on the types of arrangements that are in place at that particular place of employment. Therefore if the employment structure indicates that management roles are to be paid against the same pay structure then Great National Bank will be in breach of the Equal Pay Regulations. If this is not the case then they will be not.

Anthony

There are essentially three issues that Anthony has raised the first of these is that his supervisor is making inappropriate sexual remarks. This is likely to be considered harassment. In order for Anthony to show that he is being sexually harassed he must show that he would have been treated differently but for his sex and that the harassment is “ a particular kind of weapon, based upon the sex of the victim, which, as the employment tribunal recognise would not have been used against an equally disliked [wo]men.” Therefore if Anthony can show that these remarks amount to sexual harassment then he will be able to bring a claim at the employment tribunal.

The second issue is that Anthony objects to the amount of his salary. There is little that Anthony can do about this as he is only sixteen he will not be covered by the National Minimum Wages Act 1998 which sets a minimum salary that is payable to staff in certain age groups, and Anthony being under the age of 18 can do little to rectify this situation, other than address it with his manager and see if they are prepared to raise his salary or he can seek employment else where.

The third issue is that Anthony has injured his back as a result of lifting heavy boxes. Great National Bank owe Anthony a general duty of care with regard to his safety. That duty is four fold and they must provide competent fellow workers, safe materials, a safe place to work and a proper system of work. Great National Bank also have a statutory duty to ensure the “ health, safety and welfare of persons at work, protection other persons against risks to health and safety arising from work-related activities, and controlling the use of dangerous substances. Therefore if Great National Bank are not providing a safe system of work or are in breach of their general duty of care with regard to Anthony’s health and safety then Anthony may have an action against them for his injuries

Francesca

Whether or not Francesca consults the agency or Great National Bank in relation to her request for leave depends very much on whether she is considered to be an employee or not. The Employment Rights Act 1996 defines an “ employee” as an “ individual who has entered into or works under.... A contract of employment” and “ contract of employment” is defined, in turn, to mean “ a contract of service or apprenticeship whether express or implied, and (if it is express) whether oral or in writing.” In consideration of this statute it would appear that Francesca is not an employee as she has a contract for service and not a contract of service.

However under income taxation and social security legislation Francesca is an employee as the company pay for her, her national insurance and income tax. In support of this argument is the integration test that is often applied

to such instances and that is to say “ one feature which seems to me to run through the instances is that, under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business; whereas under a contract for services his work, although done for the business is not integrated into it but is only accessory to it.” On this analysis again it would seem that Francesca is an employee of Great National Bank, and therefore it would be concluded that she would have to approach them to enquire about her leave. Ultimately however the decision will be one of fact and law for the tribunal to decide.

Bibliography

Legislation

Employment Rights Act 1996

Equal Pay Act 1970.

Health and Safety at Work Act 1974

National Minimum Wages Act 1998

Sex Discrimination Act 1975

TUPE Regulations 1981

Cases

Brookes v Borough Care Services Ltd and CLS Care Services Ltd [1998] IRLR 636

Leverton v Clywd County Council [1989] IRLR 28

<https://assignbuster.com/employment-law-cases/>

Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014

Porcelli v Strathclyde Regional Council [1986] IRLR 134

SI (Systems and Instrumentation) Ltd v Grist [1983] IRLR 391

Stevenson, Jordan & Harrison v MacDonald & Evans [1952] 1 TLR 101

Wilson & Clyde Coal Co Ltd v English [1938] AC 57

Books

Blackstones Statutes on Employment Law 2004-2005, 14th Edition

Deakin S & Morris G, (2001) Labour Law , Third Edition, Lexis Nexis

Butterworths