

TUPE and 'organised groupings'

In *Ceva Freight (UK) v Seawell*, Mr Moffat was employed by Ceva Freight, a logistics and freight company, and worked in the "outbound team". Although the team worked for a variety of clients, unlike his colleagues, Mr Moffat spent 100% of his time working on the account of one client, Seawell. In fact, Mr Moffat's contract specifically said that he had been employed for the purpose of enabling the contract with Seawell to be performed.

Woolworths spurs landmark decision

Under UK law, a duty to inform and consult employees as a group is triggered when an employer is proposing to make 20 or more redundancies at 'one establishment' in a 90 day period. If the duty is breached, a 'protective award' can be claimed of up to 90 days' gross pay per employee. This appears to be at odds with the European Directive (on which the UK legislation was based) which does not refer to the need for employees being at "one establishment" in order for the consultation obligations to apply.

Tribunals more willing to make costs orders against employees

In employment tribunal litigation, both parties usually bear their own costs. However tribunals do have the discretion to award costs orders against parties who have 'acted vexatiously, abusively, disruptively or otherwise unreasonably'. Historically, this power has been exercised rarely but a couple of recent cases suggest that the tide is beginning to turn.

More good news for Employers about redundancy...

In *Malekout v Ahmed and others (t/a The Medical Centre)* the Tribunal was satisfied with an employer's decision to dismiss an employee for redundancy despite the fact the employer had recruited his replacement months before the dismissal.

Statistics on compensation awards out

The latest Equal Opportunities Review has published their 2012 statistics on compensation awards in discrimination cases. The

total compensation awarded came to £5,268,597. Unlike unfair dismissal claims, compensation for discrimination is unlimited and covers both financial losses and 'injury to feelings'. In 2012, there were two cases where the awards were in excess of £100,000.

Redundancy trumps poor performance

In *Fish v Glen Golf Club*, Mr Fish was the secretary of a golf club. In 2008, he was made redundant as part of an attempt to improve the club's financial position. He disputed his redundancy arguing that the real reason for his dismissal was because the club was critical of his performance.

Overtime counts when calculating statutory holiday pay

Workers are entitled to overtime payments as part of their holiday pay provided the overtime was connected to the performance of the tasks required under a contract of employment.

Religious Harassment – context is everything

The Times' senior sub-editor's comment "Can anybody tell me what's happening to the f***ing Pope?" in the context of a busy newsroom with a looming deadline on a story about the Pope, did not amount to religious harassment.

How many Easter eggs did you eat?

The NHS has reported that almost 25% of adults in the UK are obese. It will hardly be surprising to hear therefore that questions have arisen as to whether obesity is a disability.

Compensation against one respondent can be demanded from any

In discrimination cases, employees can sue both their employer and anyone they think has helped their employer to act in a discriminatory manner. In *London Borough of Hackney v Sivanandan*, the Court of Appeal confirmed that where employees claim money from multiple parties, compensation must be awarded on a joint and several basis (i.e. the employee can

claim the full amount from any of the parties and the unsuccessful respondents then have to sort out who ought to pay which proportion of the damages between themselves).

Ill health claimant's application to postpone hearing denied

A tribunal will not usually refuse an application to postpone a hearing where one of the parties cannot attend due to ill health. However, in *Transport for London v O'Cathail*, the Court of Appeal explored the circumstances when it would be fair.

Final warnings are final

In February 2005, Miss Davies, a high school teacher, was given a final written warning for alleged gross misconduct which was to remain on her record for 24 months. Miss Davies appealed the decision but subsequently dropped it after being advised by her trade union that the Council could potentially increase the sanction from a final warning to dismissal at the rehearing. In 2006, Miss Davies was accused of further misconduct. In deciding to dismiss her, the Council took into account the final written warning on her record.