

Can enhanced redundancy packages be implied into a contract of employment by custom and practice?

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In *Park Cakes Ltd v Shumba*, four employees worked for a company within the Northern Foods Group until they TUPE transferred to the Vision Group. They were later made redundant and brought a claim for enhanced redundancy payments (equal to double the statutory package plus a lump sum payment of £600). They argued this on the basis that:

- Northern Foods had a group policy of paying enhanced redundancy packages even though it was not mentioned in their contracts of employment;
- The enhanced redundancy package is referred to in the Northern Goods HR manual (although not the £600); and
- There was evidence of giving employees enhanced redundancy packages dating back to 1993.

Irrespective of this, the Tribunal dismissed the claims on the grounds that the policy had not been drawn to the attention of the employees (although it was available on request) and neither had it been shown to have been applied without exception. The Court of Appeal disagreed and remitted the case back to a new Tribunal on the basis that the Tribunal failed to consider: (1) the extent to which the policy may have come to the employees' attention; and/or (2) the effect of the documents being available on request. We will update you when there is a new judgment.

Helpfully however, the Court of Appeal offered some advice in relation to whether a term has been implied into a contract of employment. The key issue is not whether the employer intended to be bound, but whether the employer's conduct implied to the employee (on an objective basis) an intention to be bound.

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