Employment Tribunal holds that tribunals should consider the mental processes of those influencing decision makers

The Employment Appeal Tribunal ('EAT') held that when considering whether a dismissal was discriminatory on the grounds of age, tribunals should consider the mental processes of those influencing the decision makers, as well as the decision makers themselves.

Employee claiming constructive dismissal affirms contract by giving extra notice

An employee who tried to claim constructive dismissal was held by the Employment Appeal Tribunal ('EAT') to have affirmed his contract, rendering him unable to claim constructive dismissal, by giving more than his contractual notice.

Judicial review challenge to tribunal fees brought by Unison dismissed but leave to appeal given

A challenge brought by Unison to the introduction of fees in Tribunals and Employment Appeal Tribunals has been dismissed by the High Court. The High Court considered that the case had been brought prematurely and that further evidence would be needed before it could be convinced that the fees regime should be overturned. Leave to the court of Appeal has now been granted.

Commission should be included in statutory holiday pay

In a recent case, the Court of Justice of the European Union (CJEU) held that statutory holiday pay should include commission if this is received by the worker. The CJEU held that if commission were not paid, then the worker would be put at a financial disadvantage when taking statutory annual leave which was against the purposes of the Working Time Directive.

Arpita Dutt’s success for Whistleblowing Surgeon who wins his Unfair Dismissal and Disability Discrimination Claim

An employment tribunal has ruled that a respected surgeon was unfairly dismissed after whistleblowing on poor standards of care at a hospital. The case has been reported in The Sunday Times, The Independent, Health Service Journal and Hospital Doctor. Arpita Dutt and her client, Mr Weerasinghe were also featured on BBC London News on 14 July 2014.

Sanctions in disciplinary procedure could not be increased on appeal

The Court of Appeal has held that the sanction in a contractual disciplinary procedure could not be increased on appeal from a written warning to a dismissal. It held that interpreting the procedure to allow the employer to do this would be inconsistent with the contract and had the employer wanted this right, it should have been made explicit.

Member of an LLP is a “worker” and qualifies for protection under whistleblowing legislation

The Supreme Court has held that a former equity partner of a law firm structured as a limited liability partnership was a worker and therefore eligible for protection under whistleblowing legislation. The Supreme Court found that the partner fell within the definition of worker in the Employment Rights Act 1996 as she could not market her services to anyone other than the LLP and was a key part of the business.

Court upholds 12 month non-compete restriction

The High Court held that a 12 month non-compete restriction entered into as part of a sale of goodwill against a financial adviser was enforceable. The court allowed this long post-termination restriction on the basis that the goodwill agreement in place between Mr Cooper and Merlin was nearer to a business sale agreement than an employment contract.

Repeating a restrictive covenant in an undertaking

The High Court held that it was not proportionate to order an injunction against the former employees of Capgemini to enforce their post-termination restrictions. The restrictions, if enforced, would have prevented the employees from working for a competitor of Capgemini who had been awarded the contract that Capgemini had lost. The court, with a view to the fact that there was no prospect of Capgemini regaining the contract and the pending expiry of the restrictive covenants, held that damages were an adequate remedy and refused to grant the injunction.

Court order allows imaging and inspection of ex-employees' computers

The High Court granted an order allowing an employer to appoint a computer expert to inspect and take images of the computers of two former employees after information came to light in the course of tribunal proceedings that, in breach of their employment contracts, the employees had misused confidential information belonging to their employer during their employment.

Court refuses musicians specific performance of their contracts

Musicians in a play at the National Theatre made an application to the High Court for specific performance of their contracts (i.e. that the High Court should make an order that they be reinstated rather than simply get damages) after their dismissals following a decision that their performances would be replaced by recorded music. The High Court refused to grant the application because such orders should only be granted in exceptional cases and on this occasion, the musicians' interests would be adequately protected by damages.

Court of Appeal rules that poor treatment of vulnerable migrant workers because of their immigration status was not race discrimination

The Court of Appeal has held that the poor treatment of vulnerable migrant workers because of their immigration status is not race discrimination.