Employee reinstated to job on restricted duties after dismissal 9 years ago

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A tribunal may order that a person be reinstated to his/her job following an unfair dismissal even where several years have elapsed in the interim. The proper course is to reinstate him/her to the role as it was when the employee was dismissed,

not an earlier incarnation of it.

Ms McBride worked as a fingerprint officer for the Scottish Criminal Records Office from 1984. Criticism of fingerprint evidence after a murder enquiry in 1997 led to Ms McBride and 3 colleagues being suspended from work between August 2001 and May 2002. After being exonerated, Ms McBride and her colleagues returned to work in restricted roles, which prevented them from signing court reports or giving evidence in court. Ms McBride continued to work in that restricted role after her request to return to full duties was rejected. Her employment transferred to the Scottish Police Services Authority in April 2007. The following month, after a meeting with the Director of Forensic Services, Ms McBride was dismissed on the basis that there were no suitable roles for her.

Ms McBride won her unfair dismissal claim and requested that she be reinstated to her old job, meaning the role as it was before it was restricted.

The Supreme Court upheld the decision to reinstate Ms McBride, not to her job as it originally was, but to the restricted role from which she was dismissed. By the stage the Supreme Court had handed down its decision, it had been around 9 years since Ms McBride had been dismissed, yet it was held to be practicable for the Scottish Police Services Authority (replaced by the Scottish Police Authority in 2013) to reinstate her. It was right to order that the job to which Ms McBride should be reinstated was the job she had held when she had been dismissed, with restricted duties, as that was the status quo. It was not necessary to consider whether Ms McBride would accept continuing to work on a restricted basis.

Reinstatement orders are made only rarely, and this is an interesting example given the length of time since dismissal and the fact that Ms McBride was reinstated to a job with restricted duties that she was unhappy with.

McBride v Scottish Police Authority [2016] UKSC 27

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