

Employees reinstated to old contract after refusing to agree to new contract terms

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In *Hazel v Manchester College*, the Court of Appeal found that two employees who were dismissed for failing to agree to take

a pay cut following a TUPE transfer were unfairly dismissed and entitled to reinstatement to their old terms.

Mrs Hazel and Mrs Huggins' employment transferred under TUPE to Manchester College in 2009. In 2010, as a result of economic difficulties, the College proposed both: (i) redundancies; and (ii) pay cuts. Mrs Hazel and Mrs Huggins were offered alternative contracts but they refused due to the pay cut. The College then terminated their old contracts and offered employment on new contracts, which they accepted but brought unfair dismissal claims in relation to the termination of their old contracts.

The Court of Appeal confirmed that whilst dismissals for redundancy after a transfer may be fair, here the sole or principal reason for Mrs Hazel and Mrs Huggins dismissal was because they refused to sign the new terms (i.e. by reason of the transfer), therefore it was automatically unfair. As they could not be re-instated to their old positions, they kept their new roles but on their old salaries.

Orders for reinstatement and reengagement for unfair dismissal are rarely sought and even more rarely granted. However, although the employer in this case claimed it was impracticable for it to have to employ two sets of workers to do the same job on different terms, the Tribunal disagreed. It was confident that the College could handle the HR fallout.

This could be a significant spur for more employees to seek these orders that have the benefit of potentially leading to uncapped compensation.

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