Using a PILON clause to bring forward employees' termination dates after they have resigned does not amount to a dismissal – for now, at least.

[et_pb_section fb_built="1" _builder_version="3.0.100" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" custom_padding="|||" global_module="2165" saved_tabs="all" global_colors_info="{}"][et_pb_row _builder_version="4.7.4" min_height="66.4px" custom_padding="50px||||false|false" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.25" custom_padding="|||" global_colors_info="{}" custom_padding__hover="|||"][et_pb_text _builder_version="4.7.4" _dynamic_attributes="content" text_font="|700|||||||" text_font_size="27px" background_layout="dark" custom_margin="0px|||" custom_padding="0px|||" global_colors_info="{}"]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF90aXRsZSIsInNldHRpbmdzIjp7ImJlZm9yZSI6IiIsImFmdGVyIjoiIn19@[/et_pb_text][et_pb_text _builder_version="4.14.7" _dynamic_attributes="content" _module_preset="default" text_text_color="#FFFFFF" global_colors_info="{}"]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF9kYXRlIiwic2V0dGluZ3MiOnsiYmVmb3JlIjoiIiwiYWZ0ZXIiOiIiLCJkYXRlX2Zvcm1hdCI6ImRlZmF1bHQiLCJjdXN0b21fZGF0ZV9mb3JtYXQiOiIifX0=@[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" admin_label="section" _builder_version="3.22.3" global_colors_info="{}"][et_pb_row admin_label="row"

_builder_version=”4.7.4″ background_size=”initial” background_position=”top_left” background_repeat=”repeat” global_colors_info=”{}”][et_pb_column type=”4_4″ _builder_version=”3.25″ custom_padding=”|||” global_colors_info=”{}” custom_padding__hover=”|||”][et_pb_text _builder_version=”4.14.7″ text_orientation=”justified” hover_enabled=”0″ use_border_color=”off” global_colors_info=”{}” sticky_enabled=”0″]

In the recent case of Fentem v Outform EMEA Ltd it was decided that the employer’s use of a PILON clause to bring forward an employee’s termination date after he had resigned did not amount to a dismissal.

What happened in this case?

Mr Fentem resigned from Outform, giving nine months’ notice in accordance with his employment contract. He indicated to Outform that he might be willing to be flexible about the amount of notice he served.

A month before Mr Fentem’s notice was due to expire, Outform told him that they were using the PILON clause in his employment contract to bring his termination date forward and that he would be paid in lieu of notice for the remainder of the notice period. Bringing the termination date forward by a month meant that Mr Fentem would not be eligible for a bonus under the terms of the company’s bonus scheme.

Mr Fentem argued that where employment is terminated by an employer (no matter what the circumstances) this constitutes a dismissal. He claimed that bringing forward his termination date amounted to unfair dismissal.

What was decided?

Ever since the 1994 decision in Marshall (Cambridge) Ltd v Hamblin it has been accepted that an employee’s resignation is

not converted into a dismissal if an employer exercises its contractual right to make a PILON. This decision was unpopular at the time and has remained unpopular ever since. Mr Fentem, therefore, wanted the Employment Appeal Tribunal (**EAT**) to look at this question again.

The EAT agreed with Mr Fentem that the use by an employer of a PILON in these circumstances should amount to a dismissal. However, the EAT concluded it could not override the earlier decision in Marshall. For the decision in Marshall to be overturned a higher court (i.e. the Court of Appeal or Supreme Court) needed to hear the case. Therefore, it held that the use of the PILON clause by Outform did not amount to a dismissal of Mr Fentem. However, it granted permission to appeal to the Court of Appeal.

What does this decision mean for employers?

For now, the law remains that employers can bring forward the termination date of an employee who resigns and this will not constitute a dismissal (providing there is a valid PILON clause in the employee's employment contract). If the employee's employment contract does not contain a PILON clause, then bringing forward the employee's termination date will amount to a dismissal.

However, it is worth remembering that the judge who made the decision in this case did so reluctantly. There are many who think the use by employers of a PILON in such circumstances should amount to a dismissal and may be overturned in a future case. We are inclined to agree. Therefore, employers should exercise caution before using a PILON clause to bring forward an employee's termination date without their consent.

Fentem v Outform EMEA Ltd

If you would like to discuss any issues arising out of this decision please contact Rebecca Rubin (rebeccarubin@bdbf.co.uk), Amanda Steadman

(amandasteadman@bdbf.co.uk) or your usual BDBF contact.

[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" _builder_version="3.26.6" global_colors_info="{}"][et_pb_row _builder_version="3.26.6" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.26.6" global_colors_info="{}"][/et_pb_column][/et_pb_row][/et_pb_section]