THE INSTITUTE OF EMPLOYMENT RIGHTS

Labour Law Highlights 2014

by Rebecca Tuck, Stuart Brittenden, Betsan Criddle & Claire Bowsher-Murray

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labour law highlights 2014

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Betsan Criddle & Claire Bowsher-Murray

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introduction

The production of this publication each year requires reflection on the changes we have undergone in the last 12 months. The biggest change felt this year was the 2013 introduction of fees in employment tribunals. The most oft quoted figure has been the reduction of claims by 79%. We have summarised below the judicial challenges presented by UNISON. There are real issues about access to justice, but with a general election to take place in the coming year, no political party has committed to repealing the fees.

Within our writing team we have seen the return from maternity leave of all our authors. The changes to the right to request flexible working might have bypassed them as self employed barristers, but we hope that it will not bypass the workforce more generally. Perhaps if more men begin to take advantage of the ability to work flexibly, the responsibility for childcare will be seen less of a women's issue, and more of a parent or family issue. One fears though, that until we have greater pay equality between men and women, many families will not be able to afford to have the 'principle breadwinner' - so often the man – working less than full time.

A former author, His Honour Judge Jeremy McMullen QC, has now achieved a status in which he is able to work less than full time, having retired from the EAT. We are pleased to report that he has in fact been replaced in the EAT by another esteemed former author, Her Honour Judge Eady QC. As Jeremy has in the last year been reflecting on his working life spent in labour law – from his days as a GMB official, to life at the bar within Old Square Chambers, to the bench and most recently sitting in the Employment Appeal Tribunal – we would like to dedicate this 2014 edition of the labour law highlights to him.

Rebecca Tuck
Old Square Chambers
31 October 2014

industrial action

A union wishing to call industrial action has to comply with restrictive balloting arrangements contained within TULR(C)A 1992, or face an injunction. Secondary industrial action is also unlawful meaning that 'sympathy' strikes cannot be held to support one's colleagues employed by someone else. This outright prohibition on secondary action places the United Kingdom within a very small minority of European countries adopting such an extreme position. **National Union of Rail, Maritime and Transport Workers v United Kingdom**,[1] saw the challenge to these suffocating aspects of domestic legislation as a violation of the right to freedom of association under Article 11 ECHR, with Bob Crow representing his union before the European Court (having been advised by John Hendy QC and Michael Ford QC). The European Court did not rule on the balloting point on technical grounds – that complaint was inadmissible. The RMT also relied upon the repeated criticism of the UK by the ILO Committee of Experts and the ECSR for its ban on secondary action as being non-compliant with various international standards. The Court readily accepted that a union's wish to organise secondary industrial action was a manifestation of its right to freedom of association. So far, so good. However, interference with the right is permissible in so far as it is in pursuit of a legitimate aim, and necessary in a democratic society to achieve such aims. The ECHR held that the ban was justified, noting that secondary action has potential to impinge upon the rights of persons not party to the industrial dispute, to cause broad disruption within the economy, and affect the delivery of services to the public.[2] As to whether the ban on secondary industrial action is 'necessary in a democratic society', the Court made reference to the margin of appreciation afforded to Contracting States, particularly when dealing with an issue as sensitive as this. It concluded that the ban did not strike at the core of trade union activity. It appears to have decided that secondary action was of 'accessory' or 'secondary' status.[3] This meant that the UK would be afforded more latitude as to its margin of discretion. There was no unjustified interference with the right to freedom of association, the essential elements of which a union was still able to exercise, in representing its members, in negotiating with the employer on behalf of its members who were in dispute with the employer, and in organising a strike of those members at their place of work.

The Court took into account that the ban on secondary action has remained intact for over 20 years, notwithstanding two changes of

endnotes

1 [2014] IRLR 467
2 Para 82.
3 Paras 87-88.
4 Para 99.
5 [2014] IRLR 49
6 [2014] IRLR 260
7 [2014] IRLR 434
8 Paras 24, 25.
9 para. 35 of Schedule 1 TULR(C)A 1992
10 [2014] IRLR 278
11 Paras 24-25.
12 [2014] IRLR 22
13 Para 23.
14 [2014] IRLR 635
15 Para 64.
16 [2014] IRLR 386
17 Paras 46, 49.
18 [2013] IRLR 792
19 2014 UKSC 47; [2014] IRLR 811
20 [2014] IRLR 641
21 UKEAT/0033/14/BA
22 [2014] IRLR 86
23 UKEATS/0045/13/BI
24 UKEATS/0015/13/BI
25 UKEAT/0098/10/DM
26 [2013] ICR 213, [2013] IRLR 13
27 [2013] EWCA Civ 1148, [2013] IRLR 953
28 [2014] IRLR 176
29 [2014] IRLR 598
30 UKEATS/0053/13/JW
31 [2014] IRLR 648
32 ET/270129/13
33 [2014] IRLR 732
34 [2013] IRLR 696
35 UKEAT/0177/13/DM
36 [2014] IRLR 459
37 [2014] UKEAT 0061/14/1107
38 [2014] IRLR 172
39 ET Case No 3203504/13
40 [2014] IRLR 416
41 Para 98.
42 [2014] IRLR 754
43 Para 18.
44 Para 59.
45 Cavendish Munro Professional Risk Management v Geduld
46 [2014] IRLR 18
47 Paras 24, 26.
48 [2014] IRLR 500
49 Para 49.
50 [2013] IRLR 773 EAT
51 Para 54
52 [2014] IRLR 428
53 UKEAT/0056/13/BA
54 UKEAT/0268/13/SM
55 [2014] ICR 989; [2014] IRLR 392
56 [2014] ICR 251; [2014] IRLR 139
57 [2014] ICR 792
58 [2014] ICR 194; [2014] IRLR 227
59 [2014] EWHC 2735 (QB)
60 [2014] IRLR 856
61 [2014] IRLR 803
62 [2014] IRLR 25
63 [2013] IRLR 768
64 [2013] IRLR 854
65 29/10/14
66 [2014] IRLR 131
67 [2104] ICR 94; [2014] IRLR 8
68 [2014] IRLR 874
69 [2014] ICR 1065; [2014] IRLR 672
70 [2014] IRLR 354
71 [2014] IRLR 102
72 [2014] IRLR 834
73 [2014] ICR 77; [2014] IRLR 4
74 [2014] IRLR 683
75 [2013] ICR 1300
76 [2014] EWCA Civ 142
77 [2012] UKSC 73
78 [2013] EWCA Civ 1562
79 C167/12; 18/4/14
80 C363/12; 18/3/14
81 [2014] EqLR 386
82 [2014] EqLR 206
83 [2013] EWA Civ 1195
84 [2013] EqLR 1153
85 [2013] EqLR 1159
86 [2014] EWCA Civ 734
87 [2013] EqLR 1180
88 [2014] EWCA Civ 185
89 [2014] ICR 453; [2014] Eq LR 115
90 [2014] IRLR 532; [2014] Eq LR 271
91 ECtHR Application No 552/10
92 [2014] UKSC 35, [2014] 3 WLR 96
93 [2014] IRLR 689
94 [2014] IRLR 526
95 [2014] ICR. 498; [2014] IRLR 266; [2014] Eq LR 215
96 UKEAT/0509/13/LA
97 [2013] ICR 1229; [2013] IRLR 883; [2013] Eq LR 879
98 [2014] IRLR 697
99 [2014] ICR 920; [2014] IRLR 544
100 UKEAT/0071/14/JOJ

About the Institute

The Institute of Employment Rights seeks to develop an alternative approach to labour law and industrial relations and makes a constructive contribution to the debate on the future of trade union freedoms.

We provide the research, ideas and detailed legal arguments to support working people and their unions by calling upon the wealth of experience and knowledge of our unique network of academics, lawyers and trade unionists.

The Institute is not a campaigning organisation, nor do we simply respond to the policies of the government. Our aim is to provide and promote ideas. We seek not to produce a 'consensus' view but to develop new thoughts, new ideas and a new approach to meet the demands of our times.

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As the authors note in the introduction to this Labour Law Highlights 2014, the biggest change of 2013 was the introduction of fees in employment tribunals. Quoting a 79% reduction in claims, the real issue is one of access to justice and yet, as the authors point out, despite an imminent general election, no political party has yet committed to repealing the fees regime.

Given the decline in access to justice and the Government's ongoing austerity drive, it is not surprising that the section dedicated to pay and terms and conditions of employment and the section on employment rights both take up increasing space within the 2014 Highlights report.

Looking at statutory developments, the authors remind readers of the newly extended right to request flexible working. So far so good. However, for the increasing number of workers hired via agencies and protected under the Agency Workers' Regulations 2010, things are not so good. According to the report, judicial developments in the last year undermine the protections offered to agency workers who work under arrangements of indefinite duration.

Other issues covered in this Labour Law Highlights 2014 include TUPE, unfair dismissal, redundancy, equality and human rights.

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