

VORTRAGSREIHE

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17 Uhr

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„Recent Developments in the English Law of Termination of Employment“

„Neue Entwicklungen im englischen Kündigungsrecht“

INTRODUCTION

- The nature and limitations of the “common law”
- The main causes of action available to a dismissed employee
 - Wrongful dismissal
 - Unfair dismissal (introduced in 1972)
- Remedies for wrongful dismissal
- Remedies for unfair dismissal, including interim relief
- The forum of litigation
- Appeals

UNFAIR DISMISSAL

The structure of the legislation (Employment Rights Act 1996, as amended)

- Qualifications and exclusions
 - Confined to employees (as defined by s. 230(1)), those who have entered into or work under a “contract of employment”, defined (s. 230(2)) as “a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing”
 - Note the limitations of the statutory definition
 - The “multiple” test, used for determining employment status: see *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497
 - Contrast the term “worker” (defined in s. 230(3))
 - Length of employment
 - Generally one year
 - Dismissals for “special reasons” usually have no qualifying period
 - Territoriality of the statutory rights
 - ERA 1996, s. 196(3), repealed in 1999
 - The *Carver* case

- The effect of the repeal; ERA s. 244(1), which provides that the ERA is to extend to England and Wales and Scotland, but not Northern Ireland
- The structure of a “normal” unfair dismissal, i.e. one to which the special rules are inapplicable
 - Dismissal
 - Burden on employer to show reason
 - Requirement of compliance with the statutory dispute resolution procedures
 - The requirement for the employer to act reasonably in treating the reason given by it as a sufficient reason for dismissing the employee, taking into account the circumstances, “including the size and administrative resources of the undertaking”, and “equity and the substantial merits of the case” (ERA 1996, s. 98(4))
 - The remedies

Agency and temporary workers

- The relationship between the worker and the agency
 - The tradition view: contract *sui generis*
 - *Dacas v Brook Street Bureau (UK) Ltd* [2004] ICR 1437
 - *Bunce v Postworth Ltd t/a/ Skyblue* [2005] IRLR 557

- The relationship between the worker and the “end user”
 - The general position: *Costain Building & Civil Engineering Ltd v Smith and Chanton Group plc* [2000] ICR 215
 - *Dacas*
 - *Cable and Wireless plc v Muscat* [2006] IRLR 354
 - *James v Greenwich Council* UKEAT/0006/06

Territoriality

- The repeal of ERA s. 196(3) and its effect
- The House of Lords decision in *Botham v Ministry of Defence, Lawson v Serco Ltd* and *Crofts v Veta Ltd*
 - “Peripatetic” employees: international airline pilots based in London
 - “Expatriate” employees: cases involved British employee at Ministry of Defence establishments in Germany and British employee working for UK company on Ascension Island

The notion of “loss”

- Compensation, the main remedy in unfair dismissal cases: ERA ss. 128-126
 - Basic award: calculated according to a formula

- Compensatory award: “such amount as the tribunal considers just and equitable in all the circumstances having regard to the *loss* [emphasis added] sustained by the complainant in consequence of the dismissal in so far as this loss is attributable to the employer” (s. 123(1))
- The heads of loss, as per *Norton Tool Co Ltd v Tewson* [1972] ICR 501
 - immediate loss of wages
 - manner of dismissal
 - future loss of wages
 - loss of statutory protection
 - loss of pension rights
- The question raised in *Dunnachie v Kingston upon Hull City Council* [2004] ICR 1052: should “loss” include non-pecuniary loss?

Dismissals and “protected disclosures” (“Whistle-blowing”)

- A dismissal will be automatically unfair if the reason is that the employee made a “protected disclosure”: ERA s. 103A (inserted by the Public Interest Disclosure Act 1998)
- In such cases:
 - There is no qualifying period of employment
 - The remedy of interim relief is available
 - There is no statutory limit on the amount of compensation which may be awarded (the normal limit is £60,600 from 1 February 2007)

- An employee will be protected if:
 - He or she makes a disclosure in relation to one of the specified categories of subject-matter and
 - Uses one of the specified procedures to make the disclosure

- The following points should be noted:
 - The employee's belief in relation to the disclosure must be "reasonable": *Darnton v University of Surrey* [2003] ICR 615
 - The disclosure must be made in "good faith" (except where it is made to a legal adviser, the 2nd procedure): *Street v Derbyshire Unemployed Workers' Centre* [2005] ICR 97