

UK: Importance of Care with Employment Contract Terms

A recent UK Supreme Court decision perfectly demonstrates the care needed when agreeing employment contract terms. It also demonstrates some limits on the use of "hire and fire" or "hire and replace" as a device to push for a change of contract terms.

The new UK government is introducing legislation to restrict significantly the use of "hire and fire/replace" but this is not yet law.

The Employment Contract

Over 14 years ago, after talks with a small number of employees and their Union, terms were agreed for enhanced payments to these employees to incentivise their redeployment within the employer (Tesco). The enhanced payments were significant (33% of salary) and were described, both in the negotiations and the contract clause, as "permanent" during the life of their employment.

The Case

Some 14 years later, Tesco wanted to remove the enhanced payments by paying each employee a lump sum in return for their giving it up. Failing agreement, Tesco said they would fire and rehire them on terms that would not include the enhanced payment.

The Union sought an injunction to prevent this, which it won in the lower Court but lost on Appeal. Finally, the UK Supreme court granted the injunction preventing Tesco's threatened "fire and rehire" action. The Supreme Court's grounds were:

- The contract term very specifically stated it was "permanent" for the life of the employment, unless the parties agreed otherwise. The clause would be meaningless if "fire and re-hire" could be used to get around it.
- The clause wording was closely supported in the communications between the employees, the Union and Tesco at the time of the negotiation, demonstrating the clear intention that the benefit would be permanent.
- The Court therefore implied into the contract a term restricting Tesco from dismissing the employees, if the reason for doing so was the removal of the enhance benefit.

The Lesson

When seeking to incentivise employees with specific or localised benefits, great care should be taken with the wording and, wherever possible, the ability to make future adjustments as business circumstances change, should be built in.

This is a high level general update only. Legal advice should be obtained on specific circumstances.