

Spring 2016

Allan Janes

solicitors



EMPLOYMENT REVIEW

Your quarterly legal bulletin on Employment Law news from Allan Janes Solicitors

www.allanjan.es.com

Stress and long-term sick leave

Every employer should know that the greatest care is called for when employees go on long-term sick leave, suffering from stress. In one case which illustrates the point, a school which dismissed a senior teacher on medical grounds after she was assaulted by a pupil found itself facing claims of unfair dismissal and disability discrimination (*Bolton St Catherine's Academy v O'Brien*).

Ms O'Brien was a long-serving teacher at Bolton St Catherine's Academy, having commenced employment with the school in 2000, prior to it achieving academy status. She was a well-regarded member of staff with a clean disciplinary record and no history of unacceptable sickness absence.

In March 2011, she had suffered physical injuries and acute stress as a result of the assault. She had returned to work for a short period, but suffered a relapse after seeing the pupil again. A further attempt to get back to the classroom also failed and, by that time, her condition amounted to a disability within the meaning of the Equality Act 2010.

She had been on sick leave for 12 months when the school activated its sickness management policy and convened a meeting before a panel of governors. Although Ms O'Brien was undergoing therapy, there was no firm medical evidence as to when, if ever, she would be fit to return

to work and she was ultimately dismissed on grounds of medical incapacity.

In upholding Ms O'Brien's unfair dismissal and disability discrimination claims, the Employment Tribunal (ET) found that the school had failed to show that her dismissal was a proportionate means



of saving costs and fostering the efficient running of the school. There was no evidence before the governors that her absence was having an adverse impact on the school's business. A less discriminatory response would have been to wait a little longer to see if she recovered.

In upholding the school's challenge to that decision, however, the Employment Appeal Tribunal noted that it was obvious that the long-term absence of a senior teacher was bound to have an adverse impact on the school, including the additional expense of arranging cover for her duties.

The ET had failed to grapple with the issue of how long the school could be expected to wait for Ms O'Brien's recovery and, in finding that her dismissal lay outside the reasonable range of responses available to her employer in the circumstances, had substituted its own views for those of the employer.

The case was sent back to a freshly constituted ET for rehearing.

For advice on any employment issue, please contact Rebecca Smith, our Employment Specialist on email: rebecca.smith@allanjan.es.com or Tel: 01494 521301.

ALLAN JANES SOLICITORS

21-23 Easton Street
High Wycombe
Buckinghamshire
HP11 1NT

Tel: (01494) 521301
Fax: (01494) 442315
Email: rebecca.smith@allanjan.es.com

Government issues guidance on zero hours contracts

The Department for Business, Innovation and Skills has issued guidance explaining what zero hours contracts are and how they should be used. This provides information on:

- how they affect employment rights;
- appropriate use;
- inappropriate use;

- alternatives;
- best practice; and
- exclusivity clauses.

The guidance can be found at <http://bit.ly/1jDxq5o>.



Bank worker's hopes boosted in race discrimination case



It is incumbent on an Employment Tribunal (ET) to give adequate reasons for any decision it reaches, setting out, broadly speaking, its findings of fact, the questions of law and the resolution of disputes before it. The reasons should demonstrate to the parties involved that the ET has given acceptable answers to the right questions.

A black computer software consultant and business data analyst, who was dismissed by a high street bank when

he was less than three months into his contract, has won a fresh chance to prove that he was a victim of race discrimination (*Kibirango v Barclays Bank plc and Another*).

Charles Kibirango had joined Barclays Bank in Coventry in late 2012 to assist with the management of information about complaints of alleged mis-selling of payment protection insurance. After 11 weeks, his employment was summarily terminated by his line manager after the production of a report missed its deadline and relations between the two men had become strained.

Mr Kibirango brought a claim for race discrimination and harassment. The bank insisted that his dismissal had nothing to do with his race and was due to his poor performance. The ET rejected his claim on the basis that it

preferred the evidence of his line manager as to the events in question and the motives for his dismissal.

In allowing Mr Kibirango's appeal, however, the Employment Appeal Tribunal found that the ET's reasons were insufficient to enable him to understand why he had lost his claim. It was not enough for the ET simply to state that it preferred one witness's evidence over another's without also stating why that was the case.

In those circumstances, it was impossible to be satisfied that the case had been tried fairly and the matter was sent back to a fresh ET for rehearing.

For advice on any dismissal or discrimination issue, please contact Rebecca.

Acas guidance on peripatetic workers

The Advisory, Conciliation and Arbitration Service (Acas) has updated its guidance on peripatetic workers.

The section on working time has been amended to take into account the recent decision of the Court of Justice of the European Union in *Federacion de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL and Another* that time spent travelling to and from a customer's premises at the beginning and end of the day by a worker who is not assigned to a fixed place of work constitutes working time as defined by the EU Working Time Directive (which is implemented into UK law by the Working Time Regulations 1998).

The section gives further examples of when a worker is or is not considered to be at their employer's disposal.

In addition, the guidance stresses that a health and safety risk assessment should be undertaken for peripatetic workers, taking into account the fact that they will be working away from the normal work base, or will have no base, and also the type of work that will be carried out.

The guidance also contains information on employment status and the National Minimum Wage.

The revised guidance can be found on the Acas website www.acas.org.uk.

Allan Janes
solicitors

ALLAN JANES SOLICITORS

21-23 Easton Street, High Wycombe
Buckinghamshire, HP11 1NT

Tel: (01494) 521301

Email: rebecca.smith@allanjan.es.com

WWW.ALLANJANES.COM