

## 5 Month 'Unreasonable' Delay

The Employment Appeal Tribunal has held that 'unreasonable delay' in carrying out the statutory dismissal procedure will lead to a finding of automatic unfair dismissal.

Their conclusion was despite the fact that non-completion of the dismissal procedure also results in a dismissal being automatically unfair.

Reconciling 'non-completion' with 'unreasonable delay in completion' is unsatisfactory as very often the procedures will be completed, albeit late. However, the EAT found that a delay of 5 months enabled them to make a finding of 'unreasonable delay' on public policy grounds and the dismissal was automatically unfair regardless of whether the procedure may have been completed eventually.

## New ACAS Draft Guidance

ACAS has published new guidance (currently in draft form) on Discipline and Grievances at Work. It is intended that the guide will replace in part the statutory disciplinary and grievance procedures currently in place when the Employment Bill becomes law, probably sometime this year.

Although the guide has no legal authority, Tribunals will be able to increase or reduce Tribunal awards by up to 25% if the Code is not followed without good reason.

## Time Off For Training

The Dept. for Innovation, Universities and Skills has issued a consultation paper on the proposed right to ask to take time off work for 'relevant' training. It is to be available for those employed for more than 6 months and will closely mirror the current right to request flexible working.

## Rugby Club Liable for Player's Assault

Redruth Rugby Club has been held liable for personal injuries suffered by a player from a rival team after a fight broke out during a game.

The Club employed Mr Carroll as a semi-professional rugby player and as such, was vicariously responsible for Mr Carroll's actions during the course and scope of his employment.

The club had argued that as the fight had occurred after the referee had blown his whistle (i.e. after play had stopped but still before the end of the match) that they shouldn't be liable for the

actions of their players outside the normal course of play.

Their argument was successful in the lower Court but was overturned by the Court of Appeal which held that the throwing of punches after the whistle had been blown by the referee could be regarded as a fairly normal incident of a rugby match.

In addition, Mr Carroll had breached an express term of his employment contract which forbade him from physically assaulting other players. As such, the risk was specifically envisaged by the Club

## Muslim Hairstylist Wins Race Claim

A Muslim hairstylist has been awarded £4,000 for injury to feelings in a Race Discrimination claim after the owner of a London salon refused to employ her because she wore a headscarf.

The Tribunal was satisfied that the salon owner had not *directly* discriminated against the stylist as the owner would have had the same reaction to anyone wearing a headscarf, regardless of their religion.

However, the owner had discriminated *indirectly* against the stylist because, as the Tribunal stated "There was no specific evidence before us as to what would (for sure) have been the actual impact of the claimant working in the salon with her head covered at all times."

The owner, who had argued that she needed stylists to showcase alternative hairstyles commented "I never in a million years dreamt that somebody would be completely against the display of hair and be in the industry."

The case is a vivid reminder to employers of the need to take into account race discrimination laws as early as possible in the recruitment process and to seek early advice if unsure how to proceed. If such decisions are genuinely taken for necessary business reasons and not for reasons of race, then proper justification of such issues before and during an interview process can avoid claims such as in this case.

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