

Spearing | Waite

Employment Law

February 2008



Amanda Badley

Newsletter

News update for
HR Specialists



Kim Abbott

Smoking

New figures released by the government found that smoking inspectors had issued 1,233 written warnings to employers for failing to prevent smoking in their premises between July and November 2008, leading to eight court hearings.

A further 6,646 warnings were issued to firms which failed to display the correct 'No Smoking' signs in their premises or vehicles, according to the Department of Health.

It is vital that employers and business owners ensure that they have communicated their no smoking policy to their staff. It may also be worth seeking legal advice in respect of outside alternative smoking areas. Remember, an outside smoking area must not be substantially enclosed.

Unfair dismissal

Is it fair to dismiss an employee for long term sickness absence, when the employer, itself, has been partially to blame for the employee's ill health?

In *McAdie v Royal Bank of Scotland [2007]* Ms Adie had worked for RBS for over 20 years, and had obtained a senior position. In 1995, she was diagnosed with cancer. Upon her return to work, she opted for a less stressful, part time position, in another branch. In 2000/2001, Ms Adie went on

maternity leave. When she returned to work, her assessment grade had been reduced by a new manager. Ms Adie submitted a grievance, but RBS held that her reduced grade was not as a result of her maternity leave. In 2003, the same manager asked Ms Adie to temporarily relocate to another branch, in accordance with a mobility clause in her contract of employment. Ms Adie believed that she was being victimised because of her earlier grievance. She said that she might consider resigning from the bank and that if she did so, the transfer to the new branch would be the reason.

The manager and Ms Adie had a conversation and she explained her previous medical history to him. The manager did not change his decision to transfer the employee to another branch.

The employee complained to a senior line manager and there was a meeting. However, Ms Adie found that a note of the meeting omitted a number of significant matters including the previous grievance and her concerns that this might have influenced the selection of her transfer. Ms Adie said that she felt "bullied and intimidated" by the senior manager who refused to see her point of view. She was ultimately returned to former branch, but shortly afterwards Ms Adie was signed off sick and she never returned to work. She then submitted a new grievance concerning her transfer to the new branch and the senior manager's conduct in

respect of her earlier grievance and the meeting note.

The bank did not deal satisfactorily with the grievance. The bulk of the complaints were dismissed but the senior line manager was required to send a letter of apology to Ms Adie. She rejected an attempt to get her back to work, explaining that because of the way she felt, we was unable to go back to work and couldn't contemplate returning.

She took her grievance to the next stage. When invited to provide further information she wrote "the only suitable resolution in my opinion, all be not one that I would wish to take, would be for the bank to offer me recompense for the losses I would incur if I were to leave the bank's employment."

The second stage of the grievance was not upheld. She was offered a return to work at another branch belonging to the bank. Ms Adie argued that this occurred too late and her health had been affected.

By this time Ms Adie had been absent for some 10 months. The bank initiated its long term sickness procedure. Ms Adie said she was unable to consider a return to work and that she saw no suitable resolution that could enable her to do so. The Occupational Health Team described her medical condition as "severe adjustment disorder secondary to alleged work place issues including harassment."

Ms Adie was dismissed.

The Court of Appeal found that Ms Adie had been fairly dismissed. The correct question that the Court had to ask itself was "having contributed to the illness, what would a reasonable employer do in these circumstances?"

In this case the employee was not going back to work in those circumstances and so there was no alternative to dismissal. In other cases it may be necessary to go the extra mile in finding alternative employment or putting up with a longer period of sickness absence that would otherwise be reasonable.

Grievances should always be addressed effectively and promptly. Employers

contemplating any sort of capability dismissal should take reasonable steps to ascertain when an employee is entitled to the benefit of ill health retirement benefits. EAT has recently held that failure to do so normally results in an unfair dismissal.

Immigrant workers - changes from 29th Feb 2008

2008 sees radical changes introduced into all aspects of Business Immigration as a result of the introduction of Civil Penalties for illegal workers, on 29th February 2008, and the new Points Based System introduced on a roll out process by the Home Office.

The points based system will be based on a five tier structure and will have significant impact on those companies proposing to make new work permit applications and/or extension applications, in that they will need to apply to be licensed as a sponsor and have various ongoing obligations in order to maintain their licence.

Tier 1, which includes Highly Skilled Migrants is likely to be implemented in March 2008 and Tier 2 which covers the existing Work Permit Scheme, albeit a greatly modified basis, to include an English language requirement and electronic certificates of sponsorship issued by the licensed UK companies, in Autumn 2008

This newsletter does not contain legal advice. Whilst every effort is made to ensure its accuracy, Spearing Waite and the authors of this newsletter do not assume for, and cannot be held liable in respect of, the correctness of its contents, or for any reliance placed upon them.

Spearing Waite
41 Friar Lane, Leicester
0116 2624 225
www.spearingwaite.co.uk

Amanda Badley:
amanda.b@spearingwaite.co.uk
0116 242 1238

Kim Abbott:
kim.a@spearingwaite.co.uk
0116 242 1294