

## Unfair dismissal rights exclude breach of contract claims

The right to claim unfair dismissal is one of the most important forms of employment protection that an employee can rely upon. However, ever since its introduction in the early 1970s, the amount of compensation which can be awarded has been subject to strict limits.

In the joined cases of *Edwards -v- Chesterfield Royal Hospital NHS Foundation Trust* and *Botham -v- Ministry of Defence*, the Supreme Court had to decide whether those limitations had any impact on the employee's right to claim damages for breach of contract.

In both cases it was alleged that the employer had breached contractually binding dismissal procedures. The claims had been brought on the grounds that if the contractual procedures had been followed, the dismissals would not have taken place. The normal principle in awarding damages for breach of contract is to compensate the claimant for all losses flowing from the breach. However, the claims were in respect of amounts that were well in excess of the limits of unfair dismissal compensation. Could this be a way around these limits?

The Supreme Court said no. It was held that an employee could not claim compensation for losses flowing from a breach of contract where the breach was related to the dismissal process. This would amount to damages for the manner in which the dismissal is carried out. The contractual damages in those circumstances would have to be limited to the period it would take to complete the contractual procedure and the notice period. This restriction applied whether the employer's breach was in relation to an implied or express term of the contract.

### Comment

It appears that the reason behind this conclusion is that the employee has a specific statutory right to claim compensation for unfair dismissal in the Employment Tribunal. In establishing this right and applying restrictions on eligibility and compensation it was considered that parliament could not have intended the employee to have two parallel routes to compensation.

This is an important decision because it confirms that procedural errors in the handling of a dismissal do not give rise to a claim outside the scope of unfair dismissal rights and, significantly, unfair dismissal compensation limits. The Supreme Court's conclusions will also come as a relief to employers who are not certain about the contractual status of their disciplinary procedures or who are facing allegations that a procedure has not been applied correctly.

The ruling means that damages for losses suffered as a result of a breach of contract are not recoverable unless they relate to an issue preceding and independent of the dismissal. In practice it may be difficult to distinguish between claims that relate to the manner of dismissal and those arising from an employer's failure to act fairly leading up to the dismissal.

Nevertheless, care is still required, as this case does not affect an employee's liability to apply for an injunction to prevent disciplinary procedures continuing which have been instigated in breach of express contractual provisions.

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