



Bulletin 150

November 2009

AGE DISCRIMINATION – ENTITLEMENT TO EARLY RETIREMENT BENEFITS

In the case of *London Borough of Tower Hamlets v Wooster [2009] WL 2848097* Mr Wooster had been on secondment from the Council to a registered social landlord. As his secondment was due to finish he was informed that he would be made redundant unless alternative employment could be found for him. The social landlord offered to retain Mr Wooster at its own cost until he reached the age of 50 and was thereby able to qualify for his pension. However, six months prior to his 50th birthday, Mr Wooster's employment was terminated by the Council and he was forced to apply for voluntary redundancy. The Tribunal found that the motivation of the Council when dismissing Mr Wooster was to avoid him becoming entitled to an early pension when he turned 50, thereby treating him less favourably than someone of a different age to whom the age related benefit did not apply. The Tribunal could see no justification behind Mr Wooster's dismissal other than his age. The Employment Appeal Tribunal dismissed the appeal from the Council and upheld the initial decision that Mr Wooster had been directly discriminated against because of his age.

The EAT held that the offer made by the social landlord to extend Mr Wooster's employment should not be considered when deciding whether the Council was justified in ending Mr Wooster's employment. It ruled that such an offer was *ultra vires* (i.e. beyond the control of the Council) and a refusal by the Council to accept such a proposal would have been justified. However, the original decision of the Employment Tribunal was not based on the social landlord's offer to extend employment, but rather the fact that the Council itself should have extended Mr Wooster's employment when considering redeployment (even if such a course of action meant that Mr Wooster would have been employed past the age of 50). Therefore, it was held that the original decision of the Tribunal was correct when it found that the Council had unfairly discriminated against him on the grounds of his age.

Practical Tips

To reduce the potential for an age discrimination claim ensure that the reason for the dismissal is set out clearly and justifiable. An employer who dismisses for the purpose of depriving an employee of an entitlement to an age related benefit, such as a pension, will be discriminating on the grounds of age.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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