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Compromise Agreements – A warning from the Employment Appeal Tribunal

Compromise agreements are commonly used to record the terms of settlement in employment disputes. The agreement will be signed by the employer and employee (and a relevant independent advisor) and, if it satisfies all the statutory conditions, it will prevent an employee from bringing a claim, or (in some circumstances) taking an existing employment claim further.

Some clients are keen to keep the wording of compromise agreements simple. However, a recent Employment Appeal Tribunal ("EAT") decision highlights the pit falls of not going into enough detail in a compromise agreement. The recent decision of **Palihakkara v British Telecommunications plc** provides guidance on how compromise agreements should be worded to ensure that they are enforceable.

Why enter into a compromise agreement?

An employee may bring a claim against an employer and the employer may decide, taking into consideration the financial and managerial costs of defending the claim, to settle the possible action. Voluntary redundancy is another time where compromise agreements are commonly used. The parties may then negotiate the terms of a compromise agreement either directly, or through their solicitors, or other representatives.

To the employee the most important clauses of a compromise agreement will be the amount of money which they are to receive, when they shall receive it, and whether they will have to pay tax on that money. The employer will be more concerned about whether they are able to enforce the terms of the compromise agreement.

The Employment Rights Act 1996 sets out specific conditions which must be reached for a compromise agreement dealing with an unfair dismissal claim to be legally binding (there are other statutory provisions for other claims under the Sex Discrimination Act 1975 and the Race Relations Act 1976). In an unfair dismissal context the Compromise Agreement must :

- be in writing;
- relate to the particular proceedings;

- only be made where the employee has received advice from a “*relevant independent adviser*” on the terms of the agreement and its effect on his ability to pursue his rights before an employment tribunal;
- The “*adviser*” must have a contract of insurance in force or an indemnity provided for members of a professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
- identify the relevant “*adviser*”;
- state that the conditions regulating compromise agreements (under the statute/es) have been satisfied.

The recent case of **Palihakkara v British Telecommunications plc** concerned the later of the conditions. Ms Palihakkara was a finance manager/finance analyst for British Telecommunications Plc (“BT”) and claimed that she had suffered bullying and racial harassment. Ms Palihakkara formally raised her grievances but before they were resolved, she successfully applied for voluntary redundancy.

The terms of the Compromise Agreement

In April 2005, Ms Palihakkara signed a compromise agreement and on 31 May 2005 her employment was terminated. The compromise agreement stated that she will “*accept the payment ... in full and final settlement of all claims past or future arising out of the termination of her employment*”. The document then listed possible claims which Ms Palihakkara could bring against BT such as *claims in respect of pay in lieu of notice, redundancy payment, unfair dismissal, discrimination on grounds of race, sex and/or disability ...and damages for breach of contract*”.

In June 2005 Ms Palihakkara raised a further grievance.

Conclusion of the EAT

The EAT found that although the compromise agreement adequately settled Ms Palihakkara’s claims against BT in relation to the termination of her employment, they were insufficient to settle claims that arose prior to her termination.

The Agreement contained a recital section at the head of the agreement which stated that “*the conditions regulating this Agreement in section 203 of the Employment Rights Act 1996 are satisfied*”. Section 203 of the Employment Rights Act concerns unfair dismissal.

The Agreement should also have referred to the Race Relations Act 1976. The effect of there not being a recital confirming that the claim for race discrimination had been satisfied meant that even though the parties had intended to settle any claim for race discrimination Ms Palihakkara’s remained free to bring such a claim.

The EAT stated: "*This agreement is deficient ...Nothing can save it ... The absence of a clause confirming that the conditions in these discrimination statutes are satisfied is fatal*".

Conclusion

This case highlights the need for compromise agreements to be tailored to the specific circumstances of the particular case, and for care to be taken about the construction of the document. Detail is essential.

For an in-depth analysis of employment disputes please contact **Philip Henson, Jo Cullen or Juliet Petchey** of our employment team at Howell-Jones Partnership on **020 8549 5186**.

January 2007

This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead it is intended to act as an introductory view of some of the legal considerations relevant to the subject in question.