



13 October 2010

PRESS SUMMARY

Gisda Cyf (Appellant) v Barratt (Respondent) [2010] UKSC 41

On appeal from the Court of Appeal (Civil Division) [2009] EWCA Civ 648

JUSTICES: Lord Hope (Deputy President), Lord Saville, Lord Walker, Lady Hale, Lord Kerr

BACKGROUND TO THE APPEAL

This appeal concerns the question of what is the effective date of termination of a person's employment.

The determination of this date is important for a number of purposes. These include the marking of the start of the three month period within which proceedings for unfair dismissal may be taken. In the present case the relevant definition of the term is contained in section 97(1) of the Employment Rights Act 1996, which provides that, in relation to an employee whose contract of employment is terminated without notice, the effective date of termination means "the date on which the termination takes effect".

The Respondent, Lauren Barratt, was suspended from her employment with the Appellant, a small charitable organisation, because of alleged inappropriate behaviour at a private party. A disciplinary hearing was held on 28 November 2006 which the Respondent attended. At the end of the hearing she was told that she could expect to receive a letter on Thursday, 30 November informing her of the outcome. The Respondent left her home at 8 am on 30 November, however, before any letter arrived. She went to London to see and help her sister, who had given birth a week earlier. She did not return until late on Sunday evening, 3 December. A recorded delivery letter had arrived for the Respondent on 30 November, informing her that she had been summarily dismissed for gross misconduct. She did not read this letter until the morning of Monday, 4 December.

The Respondent filed a claim for unfair dismissal and sex discrimination at the Employment Tribunal on 2 March 2007. Depending on the view that one takes of the date on which the Respondent's employment was brought to an effective end, her claim was lodged either just within or just outside the period of three months from that date. If outside the period, the Respondent would be unable to maintain her claim to have been unfairly dismissed.

The Employment Tribunal held that the unfair dismissal claim was in time. The decision was upheld on appeal by the Employment Appeal Tribunal and also, on a further appeal, by the Court of Appeal. Gisda Cyf appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. It holds that: (1) the effective date of termination of employment is when the employee is informed of the dismissal or when the employee has had a reasonable opportunity of discovering that she has been dismissed; (2) it is correct to include consideration of the behaviour of the employee in an assessment of whether the employee has had a reasonable opportunity to find out about the dismissal. The judgment of the Court is delivered by Lord Kerr.

REASONS FOR THE JUDGMENT

The broader issue in the case was whether the effective date of termination of employment is:

- (1) when an employee is informed of her dismissal or at any rate when she has had a reasonable opportunity of finding out; or
- (2) some other time, for example when a letter of dismissal is posted.

In deciding that it was the former, the Court looked to the purpose of the 1996 Act. Although conventional principles of contract law may point towards the second of the two options, the appellant's argument that conventional principles of contract law should determine the interpretation of section 97 must be rejected. The effective date of termination as defined in section 97 is a statutory construct which is to be interpreted in its statutory context. The interpretation must be guided principally by the underlying purpose of the statute [para 35; 41].

Section 97 is intended to hold the balance between employer and employee but it does not require that both sides be placed on an equal footing. The section is part of a charter protecting employees' rights which recognises that employees as a class are in a more vulnerable position than employers. An interpretation that promotes those rights, as opposed to one which is consonant with traditional contract law principles, is to be preferred. An essential part of employees' rights is the requirement that employees be informed of any possible breaches of their rights [para 35 – 37]. In particular, the legislation is designed to allow an employee three months – “not three months less a day or two” – to make a complaint of unfair dismissal [para 42].

Indeed, it would not be reasonable for time to begin to run against an employee in relation to his unfair dismissal complaint until the employee knows – or, at least, has a reasonable chance to find out – that he has been dismissed. It is entirely proper that the time (already short) within which one has the chance to decide whether to bring a claim should not be further abbreviated by complications surrounding the circumstances that someone receives information that she has in fact been dismissed [para 34].

The Court felt that the matter was put beyond doubt by consideration of the interim relief provision in section 128 of the 1996 Act. An application to the Employment Tribunal for interim relief by an employee who complains that he has been unfairly dismissed must be made within seven days following the effective date of termination of employment. If the effective date is taken to mean the date of the employer's decision to dismiss or the date of his letter, the seven day period might completely expire before the employee becomes aware of the need to have recourse to it. Parliament could not have intended this [para 44 – 45].

The narrower issue in the case was whether it was correct to include consideration of the behaviour of an employee in an assessment of whether she has had a reasonable opportunity to find out about her dismissal. The Court, in holding that it was correct to include such consideration, reasoned that there is a need to be mindful of the human dimension in considering what is reasonable to expect of someone facing the prospect of dismissal from employment. To concentrate exclusively on what is practically feasible may compromise what can realistically be expected [para 30].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at:
www.supremecourt.gov.uk/decided-cases/index.html