

ARTICLE: Pension loss cannot continue when the chain of causation is broken

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Introduction

The Court of Appeal recently overturned a decision of the employment tribunal in relation to pension loss flowing from an unfair dismissal. The Court held that the tribunal had erred in principle by assessing the loss of remuneration and pension separately.

Facts

Ms Roberts worked for Aegon UK Corporate Services Limited until her employment was terminated on 15 January 2007 and she subsequently brought a tribunal claim against Aegon for unfair dismissal. On the same day as being dismissed, she began employment with Just Retirement where she received a better overall remuneration package.

However, whereas she had been part of a final salary pension scheme with Aegon, when she joined Just Retirement she only had access to a money purchase scheme. Following completion of her probation period, Ms Roberts suffered health problems and lost her job at Just Retirement in September 2007. She raised a grievance but subsequently signed a compromise agreement.

The tribunal decision

As a result of being unfairly dismissed, an employee may lose money in relation to salary and pension contributions. An employee has a duty to mitigate and reduce their loss as soon as possible, usually by finding another job. The tribunal will only award damages for loss which is a direct result of the dismissal itself, a principle known as the chain of causation. In many cases, obtaining immediate employment on a similar or higher salary is considered to break the chain of causation, so that the employee cannot claim further damages from the first employer if they lose their subsequent job as well.

In Ms Roberts' case, the tribunal found that there had been no loss of earnings because Ms Roberts had started a new job immediately after her job with Aegon ceased. The tribunal held that the new job had broken the chain of causation in relation to earnings, and any loss she suffered following the termination of employment with Just Retirement could not be attributed to Aegon.

However, the tribunal held that losses in relation to Ms Roberts' pension were not affected by her new job. The tribunal held that being a member of a final salary pension scheme was "a unique type of benefit". Since such schemes are being eased out in the private sector, the tribunal commented that it would be unlikely that Ms Roberts could find another private sector job offering such a scheme. The tribunal awarded Ms Roberts £37,188.30 as "just and equitable" compensation and Aegon appealed.

The EAT decision

The EAT dismissed the appeal, agreeing that the chain of causation was broken in relation to the loss of earnings, but not in relation to the pension loss. The EAT dismissed an argument that the tribunal should have assessed the difference between the two pensions on a purely monetary basis (as they had done in relation to Ms Roberts' salary). The EAT commented that the tribunal must have borne in mind the fact that the risk is on the employer in a final salary scheme, while the reverse is true of a money purchase scheme.

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Having considered the authorities, the EAT held that “fresh employment does not by itself stop the clock running” so far as losses are concerned and a tribunal is obliged to compare the two employments “both in purely financial terms and in other benefits which may be incapable of being compared in purely mathematical terms.”

The Court of Appeal decision reversed the original tribunal decision, completely erasing any claim Ms Roberts had in relation to loss of pension. At only 12 pages long, the Court was concise yet resolute: the tribunal had erred in principle when it decided to “apply different principles of causation to different aspects of the remuneration package”.

The Court did not accept that pensions have “some special status”; nor that a final salary pension scheme was an unquantifiable benefit to be treated different. Pension rights were to be considered as simply part of the overall remuneration package and so must be assessed the same as every other benefit.

Summary

The Court's decision is a welcome one in that it throws out the idea that final salary pension schemes are something unique and requiring additional compensation for loss. By overturning the tribunals decision, the Court effectively wiped out the £37,188.30 which Ms Robert's had been awarded for loss of her pension rights. Instead, she was only awarded £300 by the Court for loss of her statutory rights.

The Court of Appeal emphasised that it had been open to the tribunal to find that the employment with Just Retirement did *not* break the chain of causation, and so future pension loss could have been considered. As such, employers should be aware when facing unfair dismissal claims that there might be little comfort in a dismissed employee finding a new job almost immediately. However, the Court have made it clear that tribunals should take an all-or-nothing approach – either the chain of causation is broken, or it is not. With tribunals willing to award over £30,000 in recognition of lost pension rights, it could help earlier settlement of claims from those employers not wishing to run the risk of such substantial awards being made against them if the chain of causation if found not to be broken.

If you would like to discuss this case and how it might impact on your business, please contact David Hill at dhill@davidsonlarge.com or Lucy Bond at lbond@davidsonlarge.com.

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