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Enforced Changes to Contracts of Employment - Manx Tribunal Reviews Procedure



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Introduction

The Isle of Man Employment Tribunal has found that public sector workers can have the terms of their employment contracts changed provided that the employer follows a reasonable procedure.

In a significant 206-page ruling involving two test claimants and 63 claims in total, the tribunal ruled in favour of the government department that had changed the terms of collective contracts for Isle of Man bus drivers. The tribunal held that the government had established an extensive cost-cutting exercise as being “some other substantial reason” pursuant to the Employment Act 2006 of Tynwald. Further, after a five-day hearing the majority of the tribunal considered that the government department had acted reasonably in treating the reason as sufficient for the dismissals (meaning the termination of the old contracts).

Decision

The claims arose after the relevant government department organising Manx public transport at the time, the Department of Community, Culture and Leisure (DCCL), had, during 2012, negotiated with a recognised union under collective bargaining in an effort to remove payment for breaks and to lengthen driving time in order that the DCCL could meet its reduced budgetary requirements. Negotiations

failed to obtain the workers’ acceptance of the changes and the DCCL therefore gave notice to terminate the bus drivers’ contracts of employment en masse while offering new contracts with the changed terms seamlessly following the termination of the original contracts. The drivers all chose to remain in employment while working to the new terms under protest.

The tribunal found that during the 2012 negotiations the drivers’ union had on four occasions agreed to support DCCL proposals, but on each occasion the proposals were defeated at ballot. The tribunal cited Harvey on Industrial Relations and Employment Law as stating that procuring agreement of a trade union is an important factor when assessing the action taken by an employer.

The majority of drivers lodged unfair dismissal claims at the employment tribunal and, after jurisdictional issues were determined, 63 unfair dismissal claims remained, with two test cases taken to hearing to establish the principles. The tribunal heard extensive evidence from senior DCCL officers and from the drivers and union officials. In determining the legal points, the tribunal had regard to the position in English law as to enforcing a change of contract as there was no direct Isle of Man Tribunal case law on this point.

The Isle of Man Tribunal drew principles from some key English case law in this

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area, including *Hollister v National Farmers Union* ([1979] ICR 542 CA), *St John of God Care Services v Brooks* ([1992] IRLR 546), *Catamaran Cruises Limited v Williams* ([1994] IRLR 386) and the more recent case of *Sandford v Newcastle upon Tyne Hospitals NHS Foundation Trust* (UK EAT/0324/12). The tribunal noted the statement in *Public and Commercial Services Union v Minister for Civil Service* ([2001] ER (D)56) in relation to the state's margin of appreciation when courts are asked to assess a union's challenge to a ministerial decision.

The tribunal further reviewed principles from *Garside and Laycock v Booth* ([2011] IRLR 735), *Kent County Council v Gilham* ([1985] IRLR 18) and *Chubb Fire Security Limited v Harper* ([1983] IRLR 311 EAT) in assessing the reasonableness of an enforced change of contract. The reason for dismissal – 'some other substantial reason' – was accepted by the tribunal and conceded by the claimants. The majority of the panel concluded that based on the facts and law the dismissals were fair, reasonable and handled correctly. The DCCL's actions fell within the band of reasonable responses due to the urgent and transparent business needs to effect mandatory budget cuts. The tribunal recognised an extensive exercise had been undertaken by the DCCL in order to spread the required cuts as fairly as possible, and on the evidence the majority of the tribunal were satisfied that termination of the drivers' contracts and offering re-engagement was a justified and well-measured course of action.

Accordingly, the test claims were dismissed, which bound the remaining 61 claimants.

Comment

This case illustrates that an employment contract change affecting pay and conditions can be lawfully enforced, but the reason for doing so and the procedure adopted will come under the microscope, particularly where large numbers and public sector collective bargaining are involved. As with similar situations in England and Wales, the tribunal will review in detail the evidence underpinning the employer's business need to make changes, and therefore employers must be prepared to overcome this hurdle. However, the tribunal correctly resisted the temptation to substitute its own views and took a step back to assess whether the state-owned transport system's evidence showed a reasonable procedure had been adopted. Relying on the principle in *Chubb*, the tribunal balanced the advantage of the business change against the disadvantage to the workforce and found the decision to terminate to effect the necessary changes was well within the band of reasonableness.

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