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REVIEW

Manx Workers – but which law applies?

back home forward

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Introduction

Welcome to our electronic news review published by M&P Legal. We hope that the publication is of interest to recipients. Please contact any of the individuals listed on the contact us page with comments for future articles.

Advocate John T Aycock reviews .....

an unusual international aspect of Isle of Man employment contracts.

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Manx Workers - but which law applies?

As His Honour Deemster Eason commented, it is sometimes the international aspects of Manx legal practice that are the most interesting. Every now and then an anomaly arises between jurisdictions that merits closer inspection. In Isle of Man employment law such cross border curiosities often result from our labour law differing from that of the UK.

In his book "*Reflections on the Judicial Process in the Isle of Man*" Deemster Eason said: "Perhaps the most absorbing area of judicial authority which I encountered was that of jurisdiction and choice of law...again and again I had to decide whether or not I had jurisdiction to hear matters or whether or not the rules derived from a foreign system were to be applied."

In the context of employment law, Deemster Eason's comment has significance. Curiously the Isle of Man and the UK have differing positions in regard to a Rome Convention that, amongst other things, sought to prevent employers adopting a foreign law to circumvent the mandatory local employment statutory rights. In other words, an English employee working in England could not be deprived of the statutory right of unfair dismissal merely because the employment contract shows the governing law as that of, say, Hong Kong.

For some unknown reason the relevant part of that Rome Convention, embraced by the UK to prevent this type of circumvention, was not adopted into Isle of Man law even though other aspects of such convention were incorporated and enlivened by an Act of Tynwald in 1992 dealing with applicable law to contracts. This is surprising given the international nature of business in the Isle of Man and the number of contracts of employment which quote a foreign law as the governing law. For instance, I regularly see Isle of Man workers employed under contracts that have a governing law clause of England and Wales.

That is not necessarily disadvantageous to the workforce because statutory employment rights in England are generally more demanding than the Isle of Man thus the adoption of the English law clause by an employer may not circumvent the Manx statutory rights. In fact, arguably it gives the employee more protection for instance the right to make possible claims relating to age and disability discrimination which at present are not part of Manx employment law. Conversely, certain statutory maxima

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(such as the capped amount of a week's pay used in compensation calculations) are lower in the UK than here. So it is not particularly satisfactory for either party to have Manx based workers on English law contracts.

The real problem for an employee might come if the foreign law clause adopted for an Isle of Man worker embraced a less onerous legal system. On the face of it there would be an argument on the part of the employer that the Isle of Man statutory rights might not apply even though the employee worked in the Isle of Man.

The answer to such a situation is probably that section 164 of the Employment Act 2006 of Tynwald effectively prevents Manx employers taking advantage of a less onerous foreign legal system by making it clear that certain of the key statutory rights in that Act cannot be ousted by contract. But what if the employer, in those circumstances, argued that the employee has agreed Manx employment law should not apply to the contract in the first place and therefore section 164 is irrelevant? After all, the UK has a section 164 equivalent but it still saw fit to adopt the broader principle enunciated in the Rome Convention. In the absence of local adoption of that broader principle, it is not completely clear what would happen here if such a challenge was raised.

Lawyers like identifying loopholes and governments like closing loopholes. On enquiry with the Department of Trade and Industry, it is not clear why the relevant parts of the Tynwald Act that incorporated the Rome Convention were not enlivened but it is understood that moves are already afoot to incorporate an updated Rome regulation which should clarify such matters once and for all. Until such time, the challenge to section 164 and the adoption of a less onerous foreign governing law might remain issues to be determined. I can see why Deemster Eason found the questions of jurisdiction and choice of law to be perhaps the most absorbing area he encountered.

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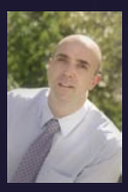

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