

**M&P**  
**LEGAL**

# REVIEW



**Manx Tribunal  
reviews the effect of  
PILON**

    
back home forward

 contact us

**September 2010**

**Advocates, Solicitors & Attorneys**  
an incorporated legal practice

**september 2010**



LEGAL

# REVIEW

## 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.

    
back home forward

 contact us



### Advocate John T Aycok reviews .....

The effect on the termination date of employment of a payment in lieu of notice (PILON)

Litigation Director John T Aycok  
jta@mplegal.im

Advocates, Solicitors & Attorneys  
an incorporated legal practice

September 2010

## Manx Tribunal reviews the effect of PILON

A case raising the question of the effect on the employment termination date of a payment in lieu of notice (PILON) was recently before the Isle of Man Employment Tribunal. The Tribunal had to look at the real intention behind a PILON and whether in the circumstances of the particular case it had the effect in law of prolonging the period of employment to enable the one year statutory threshold to be reached so as to claim unfair dismissal.

In the case the claimant had started work with the respondent on 9 March 2009 as an accounting technician. He was dismissed on 8 February 2010 with an indication that he would receive “payment in lieu of your contracted notice period of one month.”

The claimant alleged that he had the necessary one year’s service to make a claim for unfair dismissal because had he been given the proper contractual notice this would have taken him to 8 March 2010 which was the date he needed to accrue the 12 months’ service. It was common ground that the statutory extension of employment service in these circumstances (one week) was not sufficient to bring the claimant to the one year threshold.

The respondent’s case was simply that

the claimant lacked the requisite one year’s service and the effective date of termination had clearly been 8 February 2010. The PILON had not notionally extended that.

In a preliminary hearing the Tribunal reviewed the relevant law citing both Manx and English decisions on this point. In particular, reference was made to *Leech v Preston Borough Council* [1985] ICR 192 EAT where Mr Justice Waite indicated that tribunals have to draw an appropriate influence as to the sense of the expression ‘payment in lieu of notice’ and in particular “it is pre-eminently a matter however for the tribunal in every case to determine in what sense the expression has been included in the written or spoken words of dismissal”.

The case of *Adams v GKN Sankey Ltd* [1980] IRLR 416 explained that a PILON can effectively mean one of two things, namely:

1. a dismissal with notice but given a payment in lieu of actually working out that notice; or
2. an immediate dismissal with payment in lieu of the notice of which the employee has been deprived.

The effective date of termination depends

## Manx Tribunal reviews the effect of PILON

on which scenario applies – it is either at the end of the notice period (1 above) or the date of the dismissal (2 above).

The Manx Tribunal found the wording of the termination letter to be clear and the effective date of termination to be 8 February 2010 when the dismissal took place. The relevant tax form and accrued holiday pay also tallied with the 8 February 2010 being the end date. Dr Sharon Roberts, Chair of the Manx Tribunal, stated in her judgment that the PILON may well amount to a payment of damages for breach of contract for breaching the requirement to give one month's notice but that the payment in this case did not have the effect of making a different effective date of termination.

The Tribunal commented that an employee in these circumstances might have a claim for damages for breach of contract if a sum equivalent to one month's notice or allowing him to work that one month had not been provided. It was noted however that in these circumstances the rights change from a right to be employed to a right to claim damages on the date of termination.

Despite there being some faint lingering doubt about the situation, therefore, the Manx Tribunal appears to have found

decisively in favour of the English position so that a PILON does not generally operate to extend the length of service to take an employee over the 12 month unfair dismissal threshold. If the situation were different and the extra statutory one week's minimum notice took an employee over the threshold then clearly a claim would be possible. Employees in these circumstances should not despair since a possible claim in contract remains.

Finally it should be noted that unlike the English Employment Tribunal, the Manx Employment Tribunal does not have any jurisdiction at all to deal with purely contractual claims, that still remains the domain of the Isle of Man High Court.

# REVIEW

## Profiles

Click on a profile to be taken to our web site for full details





back home forward



contact us



# REVIEW

M&P Legal (registered business name of Mann & Partners Limited)  
New Court Chambers  
23-25 Bucks Road  
Douglas  
Isle of Man  
IM99 2EN

Telephone: +44 (0) 1624 695800  
Facsimile: +44 (0) 1624 695801  
Email: [law@mplegal.im](mailto:law@mplegal.im)  
Web: [www.mplegal.im](http://www.mplegal.im)  
Mann & Partners Limited  
Reg. No. 89667C

**Advocates, Solicitors & Attorneys**  
an incorporated legal practice