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A tale of a whistleblower and two hats….

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Mrs Tiplady was employed by the Council as a Senior Planning Officer. Separately, she and her husband had extensive dealings with the Council in respect of a property owned by them within the Bradford Metropolitan district. Mrs Tiplady was unhappy with the way that the Council and its staff dealt with two episodes relating to her property, leading her to lodge a formal grievance and, subsequently, to resign.

It was accepted by an Employment Tribunal that Mrs Tiplady had made “protected disclosures” during her employment. However, of the 16 detriments asserted by Mrs Tiplady, the ET found that in each case Mrs Tiplady had not been subjected to a detriment, and/or that any detriment suffered was not on the grounds of the protected disclosures made. In fact, the CoA noted that the ET found no serious criticism of the Council in relation to its handling of the two episodes at all, although it did find Mr Tiplady’s conduct (and to a lesser degree, Mrs Tiplady’s conduct) unreasonable and “highly intemperate”.

In respect of 10 of the 16 disclosures, the ET also considered that even if there had been a detriment, it would not have been “in the employment field”, relating instead to Mrs Tiplady’s capacity as property owner. Mrs Tiplady argued that this reasoning rendered the ET’s whole decision unsafe – her contention was that, as long as she was an employee/worker, then her employer could not wear “two hats” and only be liable for things done whilst wearing its hat as an employer.

The CoA found that the ET’s decisions on whether the detriments had in fact been suffered and, if so, whether they were on the grounds of a protected disclosure, were self-contained and could not be affected by any findings reached in respect of the “employment field” issue. Strictly speaking, this resolved the appeal but, due to the lack of any authority covering the point, the CoA decided to go on to consider the employment field arguments.

Given the absence of any whistleblowing authorities, the CoA considered a number of discrimination cases. Although discrimination can take place in a number of different fields such as work, services and public functions and education, the ET only has jurisdiction to consider complaints relating to “work”. The CoA concluded that the scope of whistleblower protection should be analogous and relate only to the work relationship.

When considering what the boundaries of the “employer field” were, the CoA went back to hats – but stressed that it was not concerned with the employer’s hats but rather those worn by the employee – were the detriments suffered by Mrs Tiplady wearing her “employee” (or worker) hat or in some other capacity? The CoA, whilst suggesting that consideration of the fields under the Equality Act 2010 could be a helpful thought process, steered clear of any definitive guidance applicable to all cases. However, it agreed that all of the (alleged) detriments classified by the ET as being “outside the employment field” plainly concerned Mrs Tiplady in her capacity as a property owner seeking, or being subject to, the exercise of the Council’s powers as a local authority and therefore did not arise “in the employment field”.

Whilst this issue may not arise very often (hence the lack of any previous authorities on the point), it is something that may well arise more typically in the public sector – whether, as in this case, as a result of the exercise of Council powers as a local authority in respect of

an employed property owner; or the provision of medical treatment for an NHS employee who is also a patient; or where a teacher is also a parent of a child attending the same school. The decision reached is a sensible approach reflecting a seemingly clear legislative intention to afford whistleblower protection to workers – and not to members of the public more generally.

Contact

Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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