Browne Jacobson

Employment Appeal Tribunal rules no entitlement to pay for zero-hour worker during a period of suspension

In a recent case the Employment Appeal Tribunal determined that, as a zero-hour worker, the Claimant was not entitled to be paid whilst he was suspended pending an investigation into an allegation of misconduct.

30 September 2021

In the recent case of Mr A Agbeze v Barnet Enfield and Haringey Mental Health NHS Trust, the Employment Appeal Tribunal determined that, as a zero-hour worker, the Claimant was not entitled to be paid whilst he was suspended pending an investigation into an allegation of misconduct.

In this case, the Claimant had lodged a claim for unlawful deduction of wages, arguing that there was implied term of the agreement under which he provided services to the Respondent which required him to be paid an average wage during any period of suspension, provided that the Respondent had work available for him to undertake during this time. The Employment Tribunal dismissed the Claimant's claim at first instance, a decision which he subsequently appealed.

The Claimant sought to rely on various authorities in support of his appeal, including the EAT case of Rice Shack Ltd v Obi, where the obligation to pay wages during a period of suspension was conceded by the employer. However, because in Obi, the EAT had not needed to comment on the concession, including on whether or not the concession was the correct legal position, the case was deemed not to assist Mr Agbeze in respect of his appeal.

In its judgment, the EAT in this case referred to the provisions of the agreement between the two parties under which there was no obligation on the Respondent to provide work and no obligation on the Claimant to accept any work offered to him. The agreement also provided that the Claimant would be remunerated in accordance with the duties he carried out whilst providing the services.

Whilst there was no express term providing that any periods of suspension would be unpaid, this was not considered to be significant because the other provisions in the agreement made it clear that there was no underlying right for the Claimant to be paid unless he actually carried out work for the Respondent. Accordingly, the EAT dismissed the appeal.

Whilst it was not material in this case, our advice is always to include express provisions in any agreement or contract of employment in order to minimise the risks of litigation.

Even though this case concerned an NHS bank worker, it is likely that the principles will be deemed to apply to zero-hour workers more generally. The decision is therefore undoubtedly a welcomed one for employers.

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