

news

Part-timers – TUPE turnaround

Earlier this month, to the relief of a great many employers, the Court of Appeal upheld an appeal relating to the long-running *Preston* saga. The appeal was brought by a group of power companies and concerned the effect of a TUPE¹ transfer on part-timer claims². The decision means that part-timers seeking additional pensionable service under their former employer's occupational pension scheme must bring their claim within 6 months of a TUPE transfer.

Background

- The *Preston* litigation concerned claims by employees who were denied access to occupational pension schemes because of their part-timer status.
- In February 2001, the House of Lords established that claims of this nature must be brought within 6 months of leaving employment.
- Both the Employment Tribunal (ET) and the Employment Appeal Tribunal (EAT) then considered the effect of a TUPE transfer on this time limit.

TUPE transfer

When does time begin to run?

- The ET initially decided that the 6 months time limit started at the date of the TUPE transfer.
- In December 2003, the EAT reversed this decision by holding that:
 - a claim can be brought throughout the part-timer's employment with their new (post-transfer) employer, plus 6 months;
 - if consecutive TUPE transfers take place, the 6 months runs from the end of the part-timer's last "TUPE" employment.

Preston "moral" arguments

- For the Unions, it was argued that the ET's decision would result in an unfair and arbitrary result as many part-timers would not have known the date of their TUPE transfer, nor its consequences.
- The employers argued the need for certainty and that they should not be required to bear the burden of an open-ended commitment to potential part-timer liabilities.

1 The Transfer of Undertakings (Protection of Employment) Regulations 1981 – on a business transfer, most rights and obligations arising from contracts of employment, collective agreements or the employment relationship automatically transfer from the old to the new employer

2 Under the Equal Pay Act 1970

Court of Appeal

The turnaround

- In handing down the Court's judgment, Lord Justice Pill focussed squarely on the statutory construction of the time limit.
- Finding in the employers' favour, he noted that:
 - under TUPE the employee's contract is deemed to have been always with the new employer; but
 - pension rights are not transferred³; and
 - terms which do not transfer terminate on the date of the TUPE transfer, when the 6 months limit begins to run against the former employer.

Possible appeal?

- It is possible that this latest *Preston* decision could be appealed to the House of Lords, although this has not yet been announced.
- If no further appeal is made, a large number of part-timer claims which have been held over pending this appeal may be struck out (or new ones prevented) because they were lodged out of time.

A watching brief

- This decision should bring certainty to the issue of part-timer claims now that former employers are no longer exposed to claims for such an indefinite time.
- Depending on whether there is an appeal, this may or may not be the end of the story for this tricky issue. So keep your eyes and ears open for news on that front!

³ If they relate to old age, invalidity or survivors' benefits

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If you would like further information about the Court of Appeal's decision please contact us.

Pensions Litigation and Dispute Resolution Unit litigation@sacker-partners.co.uk

SACKER^S
& PARTNERS

Solicitors specialising in pensions law

29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sacker-partners.co.uk
www.sacker-partners.co.uk

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