

EMPLOYMENT – EXPRESS AND IMPLIED TERMS

COMMON EXPRESS TERMS

- *suspend without pay
- *PILON (pay in lieu of notice)
- *Garden leave
- *Mobility clause
- *Summary dismissal
- *Email and internet

MOBILITY CLAUSES -what is reasonable at time contract was signed

**Briggs v ICI*

**Rank Xerox v Churchill*

**United Bank v Akhtar*

**White v Reflecting Roadstud Ltd*

(bound by terms of contract - for employer/employee to negotiate at time of construction of the contract. Seen as unfair decision as negotiating power is more weighted in favour of employer)

CONSTRUCTION OF EXPRESS TERMS

**Investors' Compensation Scheme Ltd v West Bromwich Building Society* [1998] – Lord Hoffman's 5 stage test:

- 1.Reasonable person having the background knowledge
- 2.Background to have been reasonably available to the parties
- 3.Excluding previous negotiations
- 4.The meaning of the document being a combination of background and words
- 5.As far as possible, words should be given their natural and ordinary meaning.

IMPLIED TERMS

*Statute; custom and practice; officious bystander; business efficacy.

Statute: notice

*Statutory minimums – s.86 ERA 96: 1 month – 2 years continuous E^{mt} = 1 week; 2+ years = 1 week for each continuous year (max 12 weeks)

*Payment in Lieu can also be implied into COE
-Rex Stewart Jeffries Parker Ginsberg Ltd v Parker

*Equal pay

*Minimum wage

Methods of implication

*Custom and Practice: “reasonable, certain and notorious.” Knowledge? *Sagar v Ridehalgh & Son Ltd* (found that custom of deducting wages re produce was found to be implied in by custom); *Meek v Port of London Authority*

*Officious Bystander Test: *Shirlaw v Southern Foundaries* (1926) Ltd -so obvious that it goes without saying.

*Business Efficiency - *Reigate v Union Manufacturing Co Ltd* - necessary in the business sense to give efficiency to the contract.

Duties owed by employer

*Pay; provide work; health and safety; references

*duty to provide work – *Wicks v Croydon* - no express garden leave clause, so CA refused garden leave injunction as duty to provide employee with available work.

Duties owed by employee

*Personal service; reasonable skill, diligence and care; good faith and confidence; obey lawful orders

*Duties owed by both employer and employee –trust and confidence

GARDEN LEAVE

- *Employee resigns
- *Pay and contractual benefits continue through notice period
- *Employee is not permitted to attend the workplace
- *Employee is bound by the implied duty of fidelity

CONFIDENTIAL INFO

*Restraint of trade: an employee's freedom to take employment as and when he wishes; an employer's interests in preserving certain aspects of his business from disclosure or exploitation by an employee/ex employee

*During employment - implied duty of fidelity includes duty of confidence and prohibits disclosure of: trade secrets; other confidential info.

*After employment – implied duty if narrower: not to disclose confidential info, which is a trade secret or akin to a trade secret.

*After employment: the *Faccenda chicken* case.

*Express confidentiality clauses - Probably won't protect anything other than the trade secret but: may help to evidence the fact that the information was impressed as Confidential Information; more of a deterrent

RESTRICTIVE COVENANTS

valid and unenforceable unless: they protect the legitimate interests of the business; and 2.they go no further than reasonably necessary to protect that interest - *Nordenfelt*

*Can include non compete; non dealing; non solicitation; non poaching

*Reasonableness factors: time, needs/interests of business; geography; employee's duties; proportionality. All of these comes into tribunal's deliberations.

*Time- duration of the restraint: one year more likely to be upheld, however over a yr maybe fine depending on profession; beware knock on effects of garden leave clauses

*Geography - ties in with nature of work; nationwide or global restrictions unlikely to be upheld if the work is regional; *Greer v Sketchley Ltd*; *Kerr v Morris*; *Office Angels Ltd v Rainer-Thomas and O'Connor* (appeared a short geographical spread, but as the business was in city centre, 1000metre radius was held to be unreasonable); *Fitch v Dewes*

*Employee's duties – *Marley Tile Co Ltd v Johnson*

*Needs/interests of business - *Bromley v Smith*; *Kores Manufacturing Co v Kolok Manufacturing Co*; *Littlewoods Organisation Ltd v Harris*; *Office Angels Ltd v Rainer-Thomas and O'Connor*. Tribunals are more focused on it being more specific as opposed to a broad approach of not being able to work in the industry altogether.

*Blue pencil test: Ct may strike out unenforceable part so that remainder is valid; only if it makes sense; ct will not re-write clause to make it valid; *Home Counties Dairies Ltd v Skilton*; *Mason v Provident Clothing and Supply Co Ltd*

*wrongful dismissal makes RC invalid.

REMEDIES - *Damages, injunction, springboard injunction