



JOELSON WINS LANDMARK EMPLOYMENT CASE

In 2015/16 the Joelson employment team secured a significant victory for employers across the UK and set an important precedent in one of the landmark employment cases in recent years.

The team's triumph in the High Court in October 2014 was upheld in the Court of Appeal with an application for further leave to appeal at the Supreme Court also being defeated in February 2015.

The decision in *Sunrise Brokers LLP v Michael William Rodgers* is now good law and will have significant implications in cases where an employer wants to try and delay a departing employee joining a competitor.

In a nutshell

If an employee resigns giving short notice or refuses to attend work during the applicable notice period the employer can choose not to accept that breach and to hold them to the terms of their contract.

If the employee refuses to turn up for work during a period of notice, in most cases the employer can stop paying them without being in breach of their own contractual obligations. Employers are not obliged to agree to a demand from an employee to be placed on paid garden leave.

The facts

Michael Rodgers was employed as a broker by Joelson's client, Sunrise Brokers LLP. His contract stated that he could not give notice (12 months) to terminate his employment until September 2014 at the earliest. Rodgers' contract included provisions that prevented him from competing with Sunrise or soliciting their customers for six months following termination.

On 27 March 2014, Rodgers resigned from Sunrise and walked out. Sunrise asked him to work during his notice period but Rodgers refused. He told them he wasn't planning to come back to the office but instead wanted to be put on garden leave. Sunrise did not place Rodgers on garden leave and instead stopped paying his salary on the basis that he was refusing to work. It later became apparent that Rodgers had signed a contract to work for a competitor, EOX Holdings Ltd, starting in January 2015 i.e. within the period covered by his notice and restrictive covenants.

On the advice of the Joelson employment team, Sunrise applied to the High Court for a declaration that Rodgers was bound by his contract (although it agreed to a reduced notice period of six months) and for an injunction preventing him from breaching his restrictive covenants by working for the competitor.

The decision

Rodgers argued that his contract had come to an end when Sunrise failed to pay his salary. As a result, he said that he was no longer bound by any restrictive covenants. He argued that if Sunrise wanted to keep the contract alive, then they were contractually bound to pay his salary as not to do so would be asking the Court to force him to work, and this is something the courts have refused to do in the past.

The High Court disagreed. It said that Sunrise could choose whether or not to accept Rodgers' breach of contract and that Sunrise had made it clear that the contract remained in force. Sunrise did not have to pay Rodgers if he refused to work and the failure to pay Rodgers did not have the effect of forcing him to work.

The court granted an injunction in favour of Sunrise holding Rodgers to a reduced notice period and his restrictive covenants. On appeal, the Court of Appeal upheld the decision and enforced the injunction. Further leave to appeal was refused by the Supreme Court.

What this means for employers

Employers have welcomed this widely reported decision. In most cases they can stop paying employees who refuse to attend work during their notice period. Employers need to be careful to make it clear whether they have accepted a breach of contract by the employee or not. If they have, failure to pay the employee during their notice period will be a breach of contract by the employer.

If the employer does refuse to accept the breach of contract by the employee then it must be prepared to allow the employee to come into work (and be paid) should the employee choose to do so. An employer may decide this is appropriate where it wants the employee in the office during a period of notice to keep a close eye on them, to sort out a proper handover including client meetings and where applicable to try and persuade the employee to stay.

Advice

For employers to take advantage of this important decision it will be essential for them to have properly drafted contracts of employment for their senior employees. Any employers concerned that their senior employees might move to a competitor therefore need to ensure that their senior contracts are reviewed carefully and updated with the necessary legal protections to enable them to take advantage of this decision.

Client Feedback



David Gibbs, MD at Sunrise Brokers LLP said:

“ We were delighted with the result which the team at Joelson achieved for us. They were commercial, understood and didn't lose sight of what we wanted to achieve. At all times attentive, they kept our management time involvement to a minimum which was a blessing. ”



David Greenhalgh, Head of the Joelson Employment Team said of the decision:

“ This case is a valuable tool in the armoury of the employer faced with a departing employee who acts in breach in relation to notice. It illustrates the magic that can be achieved by continuing the employment contract for handover and other purposes without having to use garden leave. ”

LITTLETON

Michael Duggan, QC acting on behalf of Sunrise:

“ The Joelson employment team are litigation heavyweights that hone expert tactical analysis with a hands-on approach to get the best results for their clients as the result in this case demonstrates. ”

About Joelson's employment team

Joelson's employment team is highly-ranked in the Legal 500 2017 for advising employers. It is known for providing tailored, commercially-focused advice. The team helps employers from PLCs to start ups across a wide range of industry sectors including financial services, media, food & drink, hospitality and technology.

The team is headed up David Greenhalgh who has been listed as a recognised individual in both Chambers and Legal 500 independent guides. He was recently listed in the Telegraph's Super Lawyers Guide and is a regular contributor to the Financial Times.



David Greenhalgh

Partner

david@joelsonlaw.com



Jennifer Maxwell-Harris

Partner

jennifer.mh@joelsonlaw.com



Reema Jethwa

Solicitor

reema.j@joelsonlaw.com

Praise for Joelson's employment team



“ For me it's the commercial creativeness and ability to think 'outside of the box' which makes the team at Joelson a joy to work with.

Meera Ferguson, Head of Legal, Adecco ”



“ Corporates looking for commercially savvy employment law advice with a tactical edge will love the team at Joelson.

Richard Hodgson, CEO Pizza Express ”

To discuss any employment related issue, please contact David Greenhalgh, Partner, Joelson at david@joelsonlaw.com or telephone 020 7580 5721.