

“ Plain speaking legal advice ”

**Grievances –
Would you know if one has been raised?**

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COURTS GIVE EMPLOYERS SOME CAUSE FOR GRIEVANCE

The intention of introducing the Statutory Disciplinary and Grievance procedure in October 2004 had been to simplify matters and encourage employers and employees to resolve disputes before they got to an Employment Tribunal.

Unfortunately it has singularly failed to achieve that and instead created a whole host of new areas to trip up the unwary employer. There is currently a consultation process underway to consider changing the mandatory nature of the procedure by 2009, but for the time being it is here to grapple with.

Two recent examples to be aware of: -

Settle the Claim but forget the Grievance (Ward –v- University of Essex)

Here the employer had initiated a disciplinary process on the basis of the employee's poor performance. Before any disciplinary meeting had taken place, the employee put a compromise proposal forward that included her agreeing her employment would end. In the same letter she raised a number of grievances.

A meeting was arranged at which settlement terms were thrashed out and subsequently a Compromise Agreement was signed. It was then the employee had second thoughts and she brought a constructive unfair dismissal claim arguing she had been forced into signing the Compromise Agreement. Part of her case was that she had raised grievances and her employer had failed to hold the Step 1 meeting or respond to the grievance letter at all, as required under the grievance rules.

The Employment Appeal Tribunal upheld that part of her claim on the basis that the statutory procedure requires a specified grievance process to be carried out and the employer had not done so. The poor employer of course had been concentrating on the settlement and forgotten the grievance issues.

Point for employers to remember – Any grievance must be responded to using the procedure, even if you are also in the middle of negotiating a settlement to end the employment.

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When Grievance actually means Appeal (Towergate London Marketing –v- Harris)

This got all the way to the Court of Appeal and was eventually won by the employee on a 2:1 majority decision.

Mrs Harris was selected for redundancy with two colleagues, and her employment ended by reason of redundancy on 31 October 2005. She received a letter notifying her of her selection and confirming she had the right to appeal that decision. She did not lodge an appeal, although she did contact her union, and a meeting took place between Towergate, Mrs Harris and her Union representative in December 2005, when certain additional information was requested. The three months in which to bring an Employment Tribunal claim would normally have expired on 30 January 2006.

Her Union then apparently advised her to raise a grievance. She wrote her grievance letter and delivered it to Towergate on 25 January 2006. She stated she was bringing a grievance on the basis she believed she had been unfairly selected for redundancy. Towergate wrote straight back confirming they were not going to deal with it because she had long since left their employment.

She lodged her Employment Tribunal claim on 21 April 2006, long after the standard time limit had expired.

Towergate objected on the time limit point and the Employment Tribunal agreed with them.

Mrs Harris went to the Employment Appeal Tribunal and they agreed with her argument that although her letter had specifically talked about a grievance, it was in reality an appeal against the decision to terminate her employment. Therefore, she was entitled to expect an extension to the three month limit of a further three months which meant she had until 29 April 2006 to lodge her claim, and she had done so in time.

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Towergate took it to the Court of Appeal and lost. Two of the three Judges decided that whilst employment lawyers know the difference between an “appeal” and a “grievance” you cannot expect employees to appreciate the significance. Tribunals should not take too technical an approach, and it was not unreasonable for an employee to write a letter to her employer stating she had a grievance when what she meant to say was she had an appeal.

Point for employers to remember – If a grievance letter arrives after you have dismissed an employee, it would be prudent to either treat it as an appeal or ask the ex- employee if they are in reality lodging an appeal.

If you would like to discuss any of the issues raised in this article then please contact Frankie Tierney on 01276 686222 or email frankie.tierney@herrington-carmichael.com

Watchmoor Park
Camberley
Surrey
GU15 3YL

tel: 01276 686222

4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

51 Guildford Road
Bagshot
Surrey
GU19 5NG

tel: 01276 451451

3&4 Market Place
Wokingham
Berks
RG40 1AL

tel: 01189 774045

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