

HR Forum: Tactics for Settling Employment Claims – 24 September 2008

CASE STUDY (Notes for Angus)

Angus Righteous v Merill Finch Limited

Background

Angus has been employed by Merill Finch Limited for some 11 years. He has risen through the ranks, and his last position with the company was that of Chief Technology Officer, with a salary of £50,000.

Angus complained that the role was getting on top of him. The demands and pressures were considerable and he was falling short.

The Managing Director of Merill Finch, Bernard, became aware of the matter as a crisis developed. The decision was taken to appoint a Deputy Chief Technology Officer to help Angus with his duties and responsibilities and to get the company back on track.

Since then, everything has been working so much more smoothly, to the extent that the company felt that it could live without Angus.

Bernard subsequently sat down with Angus and said that the proposal was to make his role redundant. His duties, to the extent that they continued to exist, would be devolved on the Deputy Chief Technology Officer.

Angus indicated during the redundancy consultation that he felt betrayed by the company. He suggested that the company had clearly appointed the Deputy Chief Technology Officer with a view to dismissing him in the future. He said that he had been set up. The overall work had not been diminished and consequently he felt that there was no redundancy situation.

He subsequently took advice and wrote a letter to the company indicating that he felt that the real reason was that he was falling short of what was expected and that appropriate steps should have been taken to help put him back on track. As such, the company should have followed a capability process.

He had also grumbled about the fact that the company had said that his role was unique and not pooled him with anyone else.

Having complied with the statutory dismissal process, the company dismissed Angus, following which he received a payment in lieu of notice (£25,000) and a redundancy payment of £5,000.

Angus' representatives have drafted an ET3 which has been submitted to Merill Finch. The company has suggested that a without prejudice meeting be convened which will take place shortly.

Additional notes for Angus' representatives

Angus has recently remortgaged his house and is desperate for cash. His representatives have charged him quite a lot of money for preparing the claim, and he is fearful that costs will escalate.

He knows that in the past the company has simply bled employees dry in relation to litigation and does everything in its power to delay hearings.

If Angus is honest with himself, he knows all too well that the Deputy Chief Technology Officer was much better and more efficient than him. He was actually relieved when he was appointed. He did not have the technical skills and was really letting the company down. He knew that he has been living on borrowed time.

Angus has, however asked for disclosure of documents relating to the appointment of the Deputy Chief Officer, including internal communications. The company has not replied to this.

The market for Chief Technology Officers looks very bleak at the moment because of the recession. However, Angus' brother-in-law works for an investment bank, Legman Brothers. His brother-in-law wants to offer him a job and Angus is expecting to receive an offer later today. He does not know, however, what the package will be, although he expects it to be more than he was on with Merill Finch.

Angus has been advised by his representatives that if he receives the offer, his loss will be minimised such that it will not be worth his while continuing with the litigation.

His strategy is therefore to push the company as hard as he can during the meeting, but he has decided that he will have to accept what is eventually tabled.

He also senses that Merill Finch want to stay out of the limelight at the moment, although he is not sure why because the company is normally very aggressive in these sorts of situations. Why have they suddenly offered a meeting?

Angus knows that Bernard will react very badly if he threatens to damage the company's reputation.

These materials are prepared for a Kemp Little seminar and do not constitute legal advice.