

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

CASE STUDY (Notes for Company)

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 the Company

Merill Finch Limited has received a bid from a competitor. A price has been put forward which Bernard wants to accept. The bidder is unaware of the claim by Angus, and Bernard feels that in these tricky market conditions such information may destabilise the bid or undermine the price. The bidder has met Angus and they have since indicated to Bernard that they were impressed by him. This is probably because they have no idea how poor he is at the technical elements of his job!

Bernard is due to meet the managing director of the company making the bid shortly. He therefore wants to make sure that the matter is settled before then.

Financially, however, Merrill Finch is not doing very well. Bernard feels that the HR team have let him down in relation to this matter and consequently any settlement offer will be reduced from their bonus pool. It is therefore important that you play to your strengths and negotiate as hard as you can, but beware if you do not do a deal then your job may be at risk!

As to the redundancy process, there is documentation which would suggest that the appointment of the Chief Technology Officer was indeed a set-up and that it was determined some time ago that Angus would be made redundant down the line once everything had bedded in. Angus has made a disclosure request for these documents, which the company has not replied to yet.

Angus would probably accept that if he was pooled with the Deputy Chief Technology Officer for redundancy selection, the company would almost certainly have made him redundant in any event.

It would be very difficult for a Chief Technology Officer to find another job at the moment. The company has, however, asked for details of any steps which Angus has made to mitigate his loss. No doubt this is something which will need to be addressed during the meeting, however you need to be prepared for bad news given the current economic climate.

You have authority to settle for anything up to £100,000.

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