



## **Employment Law Case Update: My Top 10**

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## Employment Law Case Update: My Top 10

2020 saw the Employment Tribunal and higher courts give out fewer judgments due to the pandemic. However, all was not lost and there were still some key judgments shaping the employment sphere and that will no doubt be of interest to lawyers and HR professionals alike. Here are my top 10:

### 1. **WM Morrison Supermarkets plc v Various claimants [2020] UKSC 12**

On 1st April 2020, the Supreme court delivered judgment detailing whether an employer is vicariously liable for a data breach of one of their employees. The Supreme Court found that the employer was not vicariously liable for its employee's data breach as the employee had not been engaged in furthering his employer's business when he committed the wrongdoing but it was a personal vendetta. Whilst this judgment is appealing to employers, each case will turn on its fact and caution ought to be exercised in applying this to all cases.

### 2. **Ishola v Transport for London [2020] EWCA Civ 112**

The question posed to the Court of Appeal was whether a 'one-off act in the course of dealings with one individual' could amount to a PCP ('provision', 'criterion' and 'practice'). Agreeing with the findings of the ET and EAT, the Court of Appeal dismissed the appeal finding that in these circumstances the one-off act did not amount to a PCP. They did accept that whilst a one-off decision may be a practice, it was not necessarily one.

### 3. **Sunshine Hotel Ltd (t/a Palm Court Hotel) v Goddard UKEAT/0154/19/00**

This was an appeal by the Respondent of a finding that an employee's dismissal had been unfair. The appeal was dismissed but the EAT found that there was no requirement on a Respondent to hold a separate investigatory hearing before holding a dismissal hearing in the ACAS Code, case law or Section 98 (4) of ERA 1996 in order that a dismissal be fair.

**4. K v L UKEAT/0154/19/00**

A schoolteacher who was found to hold indecent images of children on his computer was unfairly dismissed according to the EAT. This decision emphasised the need for employers to ensure that employees are put on notice of the grounds that they may be dismissed for. The Claimant in this case was not informed that he was at risk of being dismissed due to reputational damage to his employer.

**5. Uddin v London Borough of Ealing UKEAT/0165/19/RN**

This was an appeal against the Employment Tribunal's findings that rejected the Claimant's claim for unfair and wrongful dismissal, sex and age discrimination. The appeal was upheld in part in that withholding information from the dismissing officer affected the reasonableness of the decision to dismiss and therefore fairness. The dismissal of the Claimant was therefore found to be unfair.

**6. Hextall v Chief Constable of Leicestershire Police**

The Supreme Court refused permission to appeal the above case where the Court of Appeal had found it was not discriminatory for an employer to enhance maternity pay whilst not doing the same for shared parental pay. This makes the joined cases of Ali v Capital and Hextall v Chief Constable of Leicestershire Police binding.

**7. Lafferty v Nuffield Health UKEATS/0006/19/SS**

On appeal the EAT upheld the Tribunal's decision that an employee was fairly dismissed for 'some other substantial reason' given the potential reputational risk to his employer. He had been charged but not found guilty at the point of dismissal with a criminal offence. The Tribunal and subsequently the EAT found that the Respondent did have legitimate concerns about the impact on its reputation.

**8. Robinson v Department for Work and Pensions [2020] EWCA Civ 859**

The Court of Appeal held that in a Section 15 EQA 2010 claim a Tribunal must focus on the reason for the unfavourable treatment and examine the employer's thought processes. In this case the Claimant was disabled and required screen magnification software however it was incompatible with the system they used. There was a delay in implementing this and as such the Claimant brought grievances and then a claim. The Employment Tribunal upheld the discrimination arising from disability but dismissed the reasonable adjustment claim. The Section 15 claim was overturned by the EAT and the Claimant subsequently appealed to the Court of Appeal. This was dismissed as the treatment must have been as a consequence of disability. In this case the disability was not the cause of the treatment.

**9. Heskett v Secretary of State [2020] EWCA Civ 1487**

In this case, the Court of Appeal qualified the established principle in an indirect discrimination claim that cost alone cannot justify the treatment (the 'Cost-Plus' rule). They found that one does not necessarily need to ignore wider cost issues such as balancing the company books which could be considered a legitimate aim.

**10. Duchy Farm Kennels Limited v Graham William Steels [2020] EWHC 1208 (QB)**

The High Court considered the meaning of confidentiality clauses in COT3 settlement agreements. They found that confidentiality clauses do not automatically make confidentiality a condition of settlement. This should be expressed as an express term or specify a penalty for any breach.

Whilst it was quieter than usual, we wait in anticipation for the decisions due to be handed down in *Mencap* and *Uber* this year.

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