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UPDATE

# If you intend to dismiss an employee, you actually have to tell them

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It is axiomatic that in order for there to be an unfair dismissal, there must first have been a dismissal. In order for there to have been a valid dismissal, the employee in question must have been made 'unequivocally' aware of the employer's intention to dismiss. In *A Sandle v Adecco UK Limited* (UK EAT/0028/16/JOJ), this is exactly what the claimant failed to prove.

Miss Sandle was employed by Adecco as an agency worker. Adecco is a large recruitment company that provides temporary agency workers to its clients. Adecco assigned Miss Sandle's services as a commercial lawyer to one of its clients, BASF plc, where she worked for two years. BASF plc subsequently terminated her assignment. Neither Adecco nor Miss Sandle made any genuine effort to contact the other in respect of further assignments. Whilst Adecco's payroll department had generated a P45 (which is similar to a tax deduction form) for its own payroll records, it did not send this to her or notify her that it had terminated her employment.

The Tribunal dismissed Miss Sandle's claim for unfair dismissal in the first instance, and on appeal, the Employment Appeal Tribunal (the **EAT**) acknowledged that there is often unequal bargaining power between employer and employee, but commented that the law affords both employers and employees a remedy against the other. Employers have the option of dismissing an employee and employees have the option of treating themselves as having been dismissed as a result of their employers' conduct. In this case, Miss Sandle had the option to avail herself of the latter remedy, but elected not to do so and the EAT therefore had to consider whether there had been a dismissal at the instigation of Adecco.

The EAT held that in order for an employer to dismiss an employee, the dismissal must be communicated in some form or another so that the employee is 'unequivocally' made aware that the employment relationship has come to an end. It affirmed that a dismissal may be communicated by word or deed and will be judged by how such words or deeds would be understood by an objective observer. An effective dismissal can therefore be implied by conduct – for example, by failing to pay the employee, issuing a P45 or ending one assignment and offering a new one. Here, Adecco did not communicate to Miss Sandle that she had been dismissed or that her employment had come to an end (either directly or by implication). The EAT found therefore that there had been no dismissal and, by that token, Miss Sandle could not have been unfairly dismissed. Whilst this case went in favour of Adecco, it could easily have gone the other way had Adecco actually sent the P45 to Miss Sandle. Had it done so, there would have been no question that Miss Sandle's dismissal had been effectively communicated to her, and as Adecco failed to follow any sort of reasonable dismissal procedure, she may well have been successful in her claim for unfair dismissal.

Whilst this case is not binding on the employment tribunals of the Channel Islands, it would be highly persuasive in any tribunal proceedings. The case is not only relevant to recruitment agencies (who often operate under umbrella type employment arrangements where employment is deemed to be continuous during assignments), but also to local employers generally, as it highlights the importance of effectively communicating any decision to dismiss to the employee in question.

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