News & Comment

On the picket line: a cuts agenda takes shape

Much of the legislative programme of the present Government still remains vague. Policy still takes the form of initiatives leaked to the media rather than concrete proposals. This is just as true of employment as it is of other areas of the law.

Two ideas being trailed in the press give a taste of where the Government’s cuts agenda could well lead. The first is the suggestion, made before his resignation, by the Government’s ‘enterprise tsar’, Lord Young, during an interview in November 2010 on BBC’s Radio 4’s Today programme, that the qualifying period for which workers have to be employed before they can claim unfair dismissal should be doubled from one year to two. The peer was forced to resign after he had suggested most Britons had ‘never had it so good’ during the ‘so-called recession’.

The second is a proposal, leaked to the Daily Telegraph that workers should have to pay an issuing fee when starting an employment tribunal claim.

Neither proposal has any justification to it beyond the simple desire to tilt Tribunal proceedings further in favour of employers.

When the Tribunal system was first established, the qualification period for unfair dismissal was six months. This was then increased twice under the Tories before being reduced to its present figure of 12 months in 1999, partly in response to the decision of the House of Lords in R v Secretary of State for Employment, ex p Seymour-Smith (No.2) [2000] ICR 244, HL that a two year qualifying period discriminated against women who were less likely to remain in work for two years.

Supporters of a longer qualifying period will argue that in the ten years since the rules were changed from 1999 to 2009, the number of Tribunal cases has increased by 64 percent. More cases have come to the Tribunal, causing the taxpayer expense. Against that it must be noted that in the previous ten years from 1989 to 1999, the number of Tribunal cases had grown by around 310 percent, suggesting that the processes driving the increasing use of litigation by workers go deeper than this tweaking of the rules.

The reason why there are now so many Tribunal claims is that litigation fills a space left by the decline of industrial bargaining and by the decreasing independence of workplace dispute resolution procedures, so that someone who has a genuine grievance about their work increasingly has no option but litigation.

As for the issuing fee, the bias of the proposal is shown by the suggestion that workers should pay a fee but employers should not have to pay a fee to defend a claim. The employers have taken up this idea, complaining that Tribunals are dominated by vexatious and unmerited complaints. But in 2009 to 2010, two-thirds of all Tribunal claimants succeeded with their claim, including 72 percent of claimants in unlawful deduction of wages claims and 54 percent in unfair dismissal cases.

If Tribunal time is wasted, there is a good case to say that the primary culprits are employers running hopeless defences to reasonable workers’ claims.

David Renton

24: Gay rights activist Peter Tatchell launches a campaign to overturn the bans on gay marriage and heterosexual civil partnerships. Eight couples are to file applications at British register offices over eight weeks for ceremonies they are not allowed to hold.

27: The Care Quality Commission says that mental health patients are increasingly being locked up in hospitals without legal authority. The number of people in low secure beds has increased significantly since 2006 and the regulatory body believes the practice many infringe human rights.

10: British military interrogators may be charged as war criminals. Videos submitted as evidence in a High Court case appeared to show interrogators threatening and abusing Iraqi detainees in a secret location near Basra.

10: The Members of Parliament at the centre of the expenses scandal lose their final appeal against being tried in the criminal courts. The Supreme Court ruled that claims for expenses were not covered by parliamentary privilege. Elliot Morley, Jim Devine and David Chaytor will now be tried at Southwark Crown Court.

12: Events commemorating the sealing of Magna Carta in 1215 are launched in Runnymede, with Lord Chancellor Kenneth Clarke, the Master of the Rolls, Lord Neuberger, and Justice Minister Lord McNally in attendance.

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