

Notice of dismissal may not be retracted

A recent case demonstrates the general rule that a notice of dismissal can generally not be retracted unilaterally if it was given intentionally even if in error. The employer had discussed the possibility of asking employees to become self-employed contractors in order to avoid redundancies and when one employee expressed interest the employer, mistaking her interest for agreement, sent a letter terminating her employment and offering her a self-employed contract. The employee contacted the employer to inform him that she did not wish to be self-employed and the employer responded that there had been a misunderstanding and that her employment could continue. The employee did not return to work and the employer concluded she had resigned. The employee in fact chose to rely on the notice of dismissal and brought claims for wrongful and unfair dismissal. The Employment Appeal Tribunal considered that the Employment Tribunal had been incorrect to find that the employer had been entitled to withdraw the notice once they realised that a mistake had been made. Instead it was held that an employee was entitled to take a notice of dismissal at face value regardless of the circumstances. Where previous authorities had provided that dismissal might be set aside in special circumstances, the cases related to oral communications of dismissal given in the heat of the moment and in such circumstances an employer might be afforded the opportunity for reflection by an employee. However in normal circumstances where clear and unambiguous notice was given, the employer could not unilaterally withdraw that notice.

The moral of this case is clear: notice should never be given if the employment relationship is continuing and, in the unusual event of the contractual nature of the engagement changing, the employee's agreement must be documented to avoid the risk of dispute.

CF Capital Plc v Catherine Willoughby (2011) CA

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