

## Welcome

In this month's article we look at the decision in *Rolls Royce v Unite* and its implication for length of service as a criteria in redundancy selection. We also look at the decision in *Banerjee* - a tax decision and therefore extremely dry and not to say complicated - but one which might be a useful tool for employers and employees alike.

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## Length of Service in Redundancy Selection

The Court of Appeal has decided in the recent case of *Rolls Royce plc v Unite* that length of service can be used as part of redundancy selection criteria and would not amount to unlawful age discrimination.

The company and the union entered into collective agreements for two groups of staff under which redundancy selection would be based on a points scoring system. Each employee would be assessed against criteria such as expertise and versatility, and would also receive one point for every year of continuous employment. The parties could not agree on whether this length of service criterion complied with the Employment Equality (Age) Regulations 2006 and the matter was referred to the High Court. The Court initially held that length of service was age discriminatory but that it was objectively justified under regulation 3.

Discriminatory criteria can be allowed under regulation 3 if they are a proportionate means of achieving a legitimate aim. The collective agreements between *Rolls Royce* and the union were designed so that redundancies could be carried out fairly and in the Court's view, this was a legitimate aim. The High Court further held that the collective agreements would in any event fall within the exemption provided by regulation 32.

Regulation 32 allows certain benefits based on length of service if the length of service does not exceed 5 years or the use of longer service is a reasonable means of fulfilling a business need. Recognising long service in a redundancy selection procedure could mean that some workers kept their jobs, which had to be a benefit for those faced with unemployment. The High Court held that the length of service criterion was therefore lawful and *Rolls Royce* appealed.

The Court of Appeal dismissed the appeal. By a majority, it held that the legitimate aim was to reward loyalty and create a stable workforce in the context of a fair redundancy selection process. It was proportionate to use length of service as a criterion because it was just one of many criteria used and was not determinative of the selection. Furthermore, the Court was unanimous in its view that the use of length of service as a selection criterion could constitute a benefit for the purposes of the exemption contained in regulation 32.

For those employers considering redundancies, the message is clear: length of service can be used but only where it is one of a range of selection criteria. It should not be used on its own, as in the case of 'last in first out'.

## Income Tax Deductions

It has long been the general principal that expenses incurred in order to allow a person to perform his/her duties are not deductible against tax. However, in the recent decision of *Revenue & Customs Commissions v Banerjee*, the Court held that attendance at educational courses, conferences and meetings, including associated costs of travel and accommodation incurred during a training position, could be recovered.

This may well present an opportunity to recover expenses incurred by anybody incurring costs as part of a training programme where it can be shown that the failure to undertake that training would lead to a failure of the training and the termination of the employment itself.

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