

Employment angles: (legal tips from Ken Allison, a consultant and speaker who specialises in exploding the myths and removing the anxieties about employment law)

Ashton vs RFU

So, did Brian Ashton have a case following the recent 'public' courting of the ex England captain, Martin Johnson, to replace him as Head Coach of the English national rugby team. Amidst Ashton's perceived failure (he only led England to the World Cup final and to second place in the Six Nations tournament this year!) the Board of the Rugby Football Union pursued Johnson, without seeming to have a plan for Ashton's future.

Brian Ashton had two potential claims.

If an employee finds out that their employer is approaching someone to replace them, there is little doubt that they have a case for 'constructive dismissal', and if they resign because of this, they can take their claim to an Employment Tribunal.

Brian Ashton is reputed to have taken advice about his situation, and was probably advised that with a maximum compensation of £63,000, less his legal costs, this was not a worthwhile course of action.

His second course of action could have been to sue for 'breach of contract'. Here, there is much more scope for a significant payment, because these cases can be heard in a County or High Court. We will never really know what has gone on, but the 'breach of contract' case may have been 'kicked into touch' by an alleged clause in Ashton's contract which made provisions for him to be assigned to other duties.

In the final event, Ashton has 'accepted' the post of National Academy Director, and in so doing ruled out the possibility of him progressing these claims.

Lessons to be learnt?

- If you have a poor performing employee, deal with that first. If you take the approach of the RFU, you may avoid an expensive claim, but you will have all sorts of motivational issues to deal with from the deposed employee.
- In any constructive dismissal situation, employees need to resign. Look out for the resignation letter that contains a complaint of any sort. Under current regulations you need to treat this as a grievance. In your letter accepting their resignation, make it clear that if they would like to discuss their concerns, you will be happy to arrange a meeting to do this. This could save you suffering an up to 50% increase in compensation if they win their case at a Tribunal.
- An 'other duties' clause has to be contractual. A statement at the bottom of a job description will probably not suffice.
- Don't worry about temporary assignments that reduce a person's status. Providing you behave reasonably, and can show that you had genuine operational reasons for the demotion, these will probably not create a 'constructive dismissal'.

All reasonable efforts have been taken to ensure that the advice contained in this article represents both best practice, and the law as it stands at the time of publication. It should not be relied on as a substitute for taking advice about specific situations.

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June 2008