

Chapter 6: Statutory protection

Question 1

Sasha has been working for a local pub, the Red Lion, as a barmaid for three years. She is paid her wages directly into her bank account but has never received a pay slip. She has also never received a written contract or further details about her job. She first spotted the advert for the job in the window of a local shop and was offered the role after a brief meeting with the bar manager. The pub has been making losses and when Sasha arrived for work a few weeks ago, she found that the pub was closed. There has been no sign of the bar manager. She tried calling him on his mobile phone. He answered her initial call to say that he would try to 'sort something out' as she has not been paid her wages for the past month. She has not heard from him since.

You work in a local law centre and Sasha has come to see you for advice. Advise Sasha.

Commentary

This problem question highlights a particularly problematic issue in practice, which is that low-paid staff working in certain sectors such as hospitality may not receive a written contract, a section 1 statement, and may not even know the name of their employer. The problem with not knowing the correct name of the employer is that any claim must be brought against the correctly named respondent. In this case, you will need to advise Sasha on the right to receive a statement of particulars under section 1 of the Employment Rights Act 1996 and the sort of information that should be included in this including the name of the employer. Although there is no requirement for a contract of employment to be in writing (so this is not a breach), it is usual to have a written contract so that the parties are in no doubt as to its terms. A section 1 statement does not amount to a written contract but is of probative value (*System Floors*). You will also want to consider whether any contract has terminated, whether Sasha has been dismissed and, if so, on what grounds.

Question 2

The procedural rules governing unfair dismissal are an important way of ensuring that any decision to dismiss an employee can only be reached following a fair, objective and detailed consideration of the circumstances of the case.

Discuss.

Commentary

Any answer to this question should include a thorough explanation of the procedural rules including the ACAS Code of Practice and key cases such as *Polkey*. The question then invites you to explore the underlying rationale around these rules. For example, why might the courts in *Burchell* insist that one of the requirements before dismissing for reason of misconduct is that the employer has carried out as much investigation as is reasonable in the circumstances of the case? This is, of course, to ensure that the employer is fully aware of all the facts of the case and does not jump to knee-jerk decisions.