

Chapter 13: Collective Bargaining

Question 1

How true is it to say that the terms of a collective agreement between an employer and a trade union do not form part of the individual contract of employment?

Commentary

At the heart of this question is the two-fold nature of a collective agreement as being an agreement to govern the interactions between employer and union, and also a source of individual contractual terms. Here, the examiner is asking you to demonstrate your detailed knowledge of the case law on this dual nature. The approach of the courts is to ask whether it is 'apt' for a term of the collective agreement to be incorporated. Relevant case law to discuss includes *Alexander* and *Malone*. It would also be appropriate to refer to relevant academic discussion in this area.

Question 2

Mega Rail is recruiting drivers on its rail and underground services. Jake is told about the job opportunities by his friend Linda who is a driver. She mentions to Jake that the Rail Workers Union (“RWU”) is a very active union and recognised by Mega Rail. Jake thinks that he will stand a greater chance of working at Mega Rail if he joins the RWU and completes an application form. He mentions on the form that he is a member of the Environmental Rights party, a small political party that is committed to environmental and social justice. Jake’s membership application is rejected. When Jake mentions this to Linda, she tells him that it is well known that the General Secretary of the RWU is a strong supporter and member of the Workers Rights party, whose leader has had a number of high-profile clashes with the leader of the Environmental Rights party.

Jake also applied to Mega Rail for the role of driver and was successful at securing an interview. When asked about his hobbies, he explained that he was an active campaigner on environmental rights and was currently renovating his house to make it more environmentally efficient. He also explained that he is leading on a campaign to stop a new railway track being built across an area where a rare species of newt can be found. Mega Rail will be one of the operators on this new railway track. Jake does not get the job. When he asks for feedback, he is simply told that he was not ‘the right fit’ for the company.

Advise Jake on any rights he may have against Mega Rail and the RWU.

Commentary

This question spans a couple of areas. Its main focus is on trade union membership and the extent to which a trade union is able to refuse someone membership on grounds that they are a member of a political party. It is essential that you discuss the *ASLEF* case here as that is highly relevant, together with Article 11 of the European Convention on Human Rights and section 174 TULRCA. It may also be relevant to reflect on whether Mega Rail’s refusal to offer employment is because it operates a ‘closed shop’. Section 137 TULRCA makes it unlawful to refuse to employ a person because he or she is not a member of a union.

The second issue raised by this question is whether Jake’s commitment to a particular way of life amounts to a religion or belief under the Equality Act. Discussion of the ratio in *Grainger* would be particularly relevant here.