

Employment E-Brief No 72

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BEWARE OF THE 'WITHOUT PREJUDICE' CONVERSATION

A recent case (*BNP Paribas v A Mezzortero, 2004*) has confirmed that an employer who seeks to 'do a deal' with an employee in an attempt to dismiss them by having a 'without prejudice' conversation runs the risk of having that conversation relayed in Court.

The case concerned an individual who returned from maternity leave and made a formal complaint in respect of the way she had been treated prior to and upon returning to work. She was invited to a meeting (independent of the formal complaint) and upon entering was informed that they wanted to talk to her 'without prejudice'. She was told her job was no longer viable and that it was best if it was terminated. They said they would dress it up as redundancy as opposed to termination.

In a subsequent Tribunal application, the Applicant sought to produce evidence of the discussions. She was successful.

The Tribunal and EAT confirmed that the 'without prejudice' rule applied only to negotiations genuinely aimed at settlement of a dispute. The Applicant's grievances concerned her employment generally and did not raise any questions as to termination. Therefore, there was no 'dispute' and the meeting was not a genuine attempt to settle it.

Employers should beware when having a 'without prejudice' conversation with an employee and should only do so where there is a genuine dispute which triggers the rules. Where there is any doubt, legal advice should be taken. Employers will be well aware of the problems which could flow from the Tribunal subsequently finding out such an offer to do a deal was made.

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