

Court Accepts Doctrine of Contractual Bargaining 'Bridge'

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In the matter of *The Petition of Powell*, dealt with by the Chancery Division of the Isle of Man High Court of Justice, Deemster Cain delivered a written judgment on December 21 2000. The petitioner in this case was the deputy director of public health in the Isle of Man. He sought a declaration from the Chancery Division that certain disciplinary procedures which the Manx Department of Health and Social Security sought to implement against him did not, as a matter of fact or law, form part of his contract of employment and accordingly could not be applicable to him.

The petitioner's original appointment by the department was concluded by an exchange of letters in early 1994. At no time did the department issue the petitioner with a detailed contract of employment, or statement of terms and conditions, and only latterly in the employment relationship did the department issue a document in the form of a disciplinary procedure guide. On behalf of the department it was argued, flowing from the English decision in *NCP v Galley* (1958) among others, that the form of disciplinary procedures sought to be utilized by the department were incorporated by necessary implications in the petitioner's contract of employment. It was identified that for the contract to have included such a provision by implication, there is required to be a collective bargaining agreement negotiated on the employees' behalf and a 'bridge' between that agreement and the individual employment contract. Typically, that bridge would be established by express reference to another document that is not itself included within the contractual documentation.

The well-known arguments in respect of the 'officious bystander' test were also canvassed before the court, again repeating a well-known doctrine that "the court may imply a term where it is necessary if the contract is to work properly. They must have intended their contract to work; therefore, they must have a 10-day term necessary to make it work".

On the facts of the petition, the court considered that a necessary bridge existed between negotiations undertaken, in the view of the court, with the knowledge of the petitioner, and the department. It further noted that the initial letter of employment in 1994 expressly stated that the terms and conditions of employment effective in the department in the Isle of Man were substantially the same as those in operation in the United Kingdom.

The court concluded that the disciplinary provisions that would apply to a similar post in the United Kingdom were to be considered applicable in the Isle of Man, subject to any consequential - and any implicitly recognizable - amendments, and allowing for the different administrative and procedural systems in the two jurisdictions.

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