

Employment Law London

Banking sector

Case watch

30 March 2011

Contracts of employment, Effective termination, Payments in lieu of notice

Société Générale (London Branch) v Raphael Geys

Court of Appeal

Employer: Société Générale (S)
Employee: Raphael Geys (G)

The issue was whether S had failed to properly exercise its right to terminate the contract of employment of its former employee (G).

Clause 13 of G's contract provided for a three-month notice period.

The sequence of events ran as follows:

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| 29 November 2007 | S told G that his employment was being terminated "with immediate effect", and he was escorted from the building. |
| 7 December 2007 | G's solicitors wrote to S's solicitors asking for further information about the sums S was offering to pay him following the termination of his employment, but reserving all his rights in the meantime. |
| 10 December 2007 | S sent G a draft severance agreement which included a summary of proposed payments. |
| 18 December 2007 | S made a payment directly into G's bank account. |
| 21 December 2007 | G's solicitors wrote again, asking for information as to how the proposed payments had been calculated, while continuing to reserve G's rights in relation to his contract of employment. |
| 2 January 2008 | G's solicitors wrote to S's solicitors stating that G had decided to affirm his contract. |
| 4 January 2008 | S sent G a letter confirming the details of the termination of his employment. It stated that the payment made to his bank account was payment in lieu of notice, as provided for by para.8.3 of the staff handbook. |

It was G's case that para.8.3 conflicted with cl.13 of his contract, and that his contract provided that if there was a conflict, the terms of the contract would prevail and if so, there was no right to terminate by a payment in lieu of notice.

Held:

It was common ground that S's summary dismissal of G was a repudiation of the contract which G did not accept. The unaccepted repudiatory dismissal on 29 November did not automatically terminate his employment contract,

There was no conflict between cl.13 and para.8.3. An example of a true conflict would have been if the handbook had provided that the contract could be terminated by just two months' notice. The so-called conflict in the instant case was nothing like that example. The fact that the payment in lieu of notice option was included in para.8 rather than in cl.13 made no difference. It had to be read together with cl.13 and reconciled with it. There was no difficulty in doing that and para.8.3 gave S a lawful alternative of terminating the contract by a payment in lieu of notice.

The making of the para.8.3 payment by S did terminate the employment contract. There was nothing in para 8.3 which provided or suggested that any notice was required in order to perfect a termination effected under it. There was no reason in principle why the parties to an employment contract could not provide for its termination without notice of such termination being given to the employee, or therefore in the manner provided for by para.8.3,

The making of an agreed payment in lieu of notice constituted an outward manifestation of S's decision to terminate G's contract of employment with immediate effect. By stipulating for the making of such a payment as the means of termination, the parties had dispensed with any additional requirement for communication of that decision.