

# Case Update



Follow the Employment team on LinkedIn



December 2019

## Trade union inducements

---

Employers are prevented from inducing employees who are members of a recognised union to step out of collective bargaining arrangements. But can a 'one-off' pay offer constitute an unlawful inducement?

The employer in this case had a collective agreement with a recognised trade union, which provided that pay negotiations would take place annually. However, pay negotiations for 2016 broke down when the union rejected the employer's offer. The employer then went directly to employees with the same offer, giving them the chance to sign up on an individual basis. The offer, which comprised a two percent pay rise and a Christmas bonus, was made twice to employees, once at the end of 2015 and once again in early 2016 for those who had not yet signed up. A group of employees brought claims alleging that the employer's direct offers constituted unlawful inducements for them to step outside of collective bargaining.

The Employment Tribunal and the Employment Appeal Tribunal (EAT) initially ruled that the direct offers were unlawful inducements. The Employment Tribunal and EAT said that the employer's motive was to circumvent the collective bargaining process and to make deals directly with employees. However, on appeal, the Court of Appeal ruled that an offer will only be unlawful if the effect is that employees' pay or other terms are no longer determined by a collective agreement on a permanent basis. A 'one-off' offer covering only one year would therefore not constitute an unlawful inducement – otherwise, unions would effectively have a veto over even the most minor changes to terms and conditions.

This ruling is helpful for employers who recognise trade unions. It means that where there is an impasse in annual pay negotiations, the employer can put its offer directly to employees. Provided there is a genuine impasse, the offer is a 'one off', and the employer intends to continue with collective bargaining in future, this will not constitute an unlawful inducement. However, employers should still tread carefully in collective bargaining negotiations. An employer who blatantly or consistently disregards the collective bargaining process and goes straight to employees with its offer could still fall foul of the unlawful inducement provisions. The cost is significant – a mandatory award of £4,059 per each union member to whom an offer is made. Employers should therefore only make offers directly to employees after efforts have been made to agree the proposal with the recognised trade union. It is also possible that the case could be appealed to the Supreme Court, which could take a different view. Employment Update will report developments.

### **KOSTAL UK LIMITED V DUNKLEY**