



25 April 2018

## PRESS SUMMARY

**Newcastle upon Tyne Hospitals NHS Foundation Trust (Appellant) v Haywood (Respondent) [2018] UKSC 22**  
*On appeal from [2017] EWCA Civ 153*

**JUSTICES:** Lady Hale (President), Lord Wilson, Lady Black, Lord Lloyd-Jones, Lord Briggs

### BACKGROUND TO THE APPEAL

The issue in this appeal is when the notice period begins to run, if an employee is dismissed on written notice posted to his home address. If the answer is not specified in the contract of employment, is it (i) when the letter would have been delivered in the ordinary course of post; (ii) when it was in fact delivered to that address; or (iii) when the letter comes to the attention of the employee and he has either read it or had a reasonable opportunity to do so?

The respondent, Mrs Haywood, was dismissed by reason of redundancy by her employer, the appellant NHS Trust ('the Trust'). Her contract of employment provided for termination on a minimum period of notice of 12 weeks but not how such notice should be given. On 20 April 2011, the Trust sent a letter giving written notice of termination by recorded delivery to Mrs Haywood's home address. The Trust was aware that she was away on holiday. The letter was collected from the local sorting office by her father-in-law on 26 April 2011 and left by him in her house that day. She returned from holiday abroad on 27 April 2011 and read the letter.

On the unusual facts of this case, the date on which the 12 week notice period started to run was highly material. If it commenced on 27 April 2011, it expired on 20 July 2011, the date of Mrs Haywood's 50th birthday, and Mrs Haywood would be entitled to claim a non-actuarially reduced early retirement pension.

The High Court and the Court of Appeal (by a majority) upheld Mrs Haywood's case that the notice period only commenced on 27 April 2011.

### JUDGMENT

The Supreme Court by a majority of three to two (Lord Lloyd-Jones and Lord Briggs dissenting) dismisses the Trust's appeal. Lady Hale, with whom Lord Wilson and Lady Black agree, gives the main judgment and Lady Black adds a further analysis of the case-law. The dissenting judgment is given by Lord Briggs, with whom Lord Lloyd-Jones agrees.

### REASONS FOR THE JUDGMENT

In the absence of an express contractual provision, the court had to determine the implied contractual term as to when a notice takes effect. The Trust argued that there was a common law rule, principally

derived from landlord and tenant cases, which provided that notice was given when the letter was delivered to its address. Mrs Haywood relied on the approach of the Employment Appeal Tribunal (EAT) in employment cases to support her case that notice only took effect when it had actually been received by the employee and the employee had either read or had a reasonable opportunity of reading it [12].

Having reviewed the cases relied on by the parties, the majority held that the approach which had been consistently taken by the EAT was correct because:

- The common law rule in non-employment cases was not as clear and universal as suggested. Receipt of the notice was always required, and arguably by a person authorised to receive it. Even after a statutory presumption of receipt at the address was introduced, this was rebuttable.
- The EAT was an expert tribunal familiar with employment practices, and with the general merits in employment cases.
- Mrs Haywood's contract with the Trust was concluded when the EAT cases were thought to represent the general law.
- There was no reason to suppose that this approach had caused any real difficulties in practice. An employer could either make express alternative provision in the contract or ensure notice of termination was received in sufficient time to allow the employment to terminate on a specified day.
- It was important for both employer and employee, even in dismissal on notice cases, to know whether and when the employment had come to an end. The rule should be the same as for summary dismissal cases [39].

Lady Black, agreeing with this conclusion, reviewed the common law cases in further detail to support the finding that that these cases did not have the effect contended for by the Trust [41-75]. Insofar as any clear principle emerged, it revolved around delivery to the recipient's agent, who might be a household servant, professional agent or family member, who would be expected to take in communications for the intended recipient as part of their role [73].

Lord Briggs, dissenting, would have found that the common law cases had long established a rule embedding an implied term into contracts of employment determinable on notice [78]. Such contracts were only a sub-species of relationship contracts [79]. The rule for relationship contracts was that written notice of termination was given when the document containing it was duly delivered by hand or post to the address of the intended recipient, regardless of whether either the intended recipient or his agent was there to receive it [81, 100]. The rule had a sensible and even-handed policy objective behind it, creating certainty for both parties and representing a fair allocation of risk [118-121].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>