

## Transcript of Podcast

May 2008

Hello and welcome to this month's D&W Employment Vox, our regular podcast designed to update you on news and developments in the field of employment law.

My name is Alasdair Anderson and in this D&W Vox, prepared by our employment team, we take a look at a selection of news highlights:

- **The power of the witness - threatening behaviour leads to respondent being banned from participating in proceedings**
- **ACAS publishes advice on spotting the signs of depression in the workplace**
- **Launch of virtual 'Union Island'**

**But first, the EAT has recently confirmed that where a witness for the respondent pursues a course of intimidatory conduct against a claimant it is appropriate for the respondent's response to be struck out.**

Mr Hatfield pursued a claim of unfair dismissal against his ex-employer, Force One Utilities Ltd. One afternoon, following the adjournment of the hearing, Mr Hatfield was leaving the Tribunal building, when one of Force One's witnesses, Mr Shuter, made a serious threat of physical harm to him. Mr Shuter went as far to say that Mr Hatfield should be careful "*how he slept at night*". Mr Shuter also blocked Mr Hatfield into the Tribunal car park and then drove up along side Mr Hatfield's car and said '*Me and you - 10 minutes up the road now.*'

When the matter came back before the Tribunal some 5 months later Mr Hatfield explained what had happened and, given that he still appeared nervous and afraid, the hearing was adjourned again for the Tribunal to consider whether or not to strike out Force One's response.

The Tribunal decided that Mr Shuter's conduct related to the proceedings and made it impossible to hold a fair trial. As a result it struck out Force One's response and barred them from participating in further proceedings. The EAT agreed with this approach, on the basis that where the intimidated party is unable to manage their fear and is likely to tailor their evidence to fit in with the respondent's case as a result, the only proportional response is to disallow the intimidating party from taking part in further proceedings.

Given the Tribunal's power of strike out for scandalous, vexatious or unreasonable behaviour it is worth considering a potential witnesses' disposition and attitude to the case before deciding to call them. However, Mr Shuter's behaviour does appear to have been extreme!

**The last week of April saw the Depression Alliance run 'Depression Awareness Week'.** To coincide with this, ACAS published advice on spotting the signs of depression in the workplace and has issued a new guide entitled '*Health, work & wellbeing*'. The guide addresses the role of line managers in managing employees with depression, gives advice on how to get employees involved, sets out tips on developing an attendance culture and even has advice on drugs and alcohol policies.

Listeners will be reminded of the recent case of *Corr v IBC Vehicles* where an employee who had been subject to a workplace accident subsequently suffered depression. In that case the employee took his life prior to the case reaching settlement. The House of Lords decided that it was reasonably foreseeable to his employer that he might commit suicide as a result of the accident and held that the employer was 80% negligent.

The message from this case is that it is essential that employers have regard to the warning signs from their staff and closely monitor workloads on a regular basis. It has been established by the House of Lords that employers should be on "suicide watch" with stressed, depressed and vulnerable employees or risk facing the consequences for failure to intervene where necessary. Use of the ACAS guide may help prevent your organisation being in this position in the first place.

**And finally, 1st May saw the TUC, UNI Global Union and the New Unionism Network launch 'Union Island', a home for unions and activists in the virtual world Second Life™.** Second Life™, which first opened in 2003, is an interactive 3D environment used by millions of people around the world to chat, network and create and conduct business. It is reported to have 13 million residents and 1 million users every month.

A number of businesses have already cottoned on to the advantages of Second Life™ and use it to hold virtual meetings. Now the unions are hoping to capitalise upon it to enable a new generation of online activists to have more input on union activities.

Visitors to the island can partake in all the activities ongoing at the time, as they would do on a real island. For example, for the Island's launch, the Island hosted a dance party with a live DJ from Second Life's club, themed surgeries for union organisers in the Island's virtual bar and training for activists on how to get more out of Second Life through networking and designing their own 3D creations!

*Comment from John Wood, New Media Officer, TUC.*

And that's the D&W employment Vox News for May 2008.

Each month the employment team take an in depth review of a practical issue in their written bulletin.

And if you want to find out how to access our bulletin or find out more about any of the issues covered in this D&W Vox please contact **Catriona Aldridge** on 020 7240 2401. Details on how to subscribe to our written bulletins can be found on our website at [www.dundas-wilson.com](http://www.dundas-wilson.com). Each D&W employment Vox will also be archived on the website in case you want to listen again or tell a colleague about us. Our website also contains information on future events and seminars.

And that's all for this D&W Vox.

This podcast is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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If you would like any further information on any of these cases or news items, or any other Employment issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

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