

YOUR WEEKLY BULLETIN OF WIT AND WONDER



SING OUR SONG!

Expect to be deeply moved by our Eurovision entry lyrics.



TRANSFORMATIVE

How to turn a resignation into a dismissal one easy PILON move!



DON'T EAT THE DOCKYARD OYSTER!

The slangy truth of our local words.

RING-A-DING-A-BOOM-BANG-BANG

A local slang quiz on *Yahoo!* has left me wondering how much slang is specific to our part of the world.

Here in the Southampton office, if you get weary of being viciously tickled and/or chased* (look, it's team-building, isn't it?) you might yell 'SCRIBS!' Meaning you'd had enough and wanted out of the game.



So we decided to craft the ultimate part-recycled BRITISH Eurovision song, which we're calling **SAVE ALL YOUR PUPPETS FOR MY MIND.**

It's about love and loss and... puppets. We haven't finalised it yet but we think the opening goes like this:

You've got to speed your puppet up

And save it all for me

I wonder if one day that

You'll make your mind up, see?

I'm on a string, slow it down

Say that you'll care

And play around

Even though you're only three.

It's kind of upbeat and hopeful but also poignant and... possibly a bit political..? Not sure

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A BIT DISMISSIVE

And speaking of making your mind up brings me to the case of *Fentem v Outform EMEA 2022*, in which the tribunal considered whether paying an employee in lieu of notice transformed their resignation into a dismissal.

Mr Fentem resigned from his employment with Outform in April 2019, giving nine months' notice. About a month before his notice was due to expire, the company invoked the payment in lieu of notice (PILON) clause in Mr Fentem's contract of employment, bringing the date of his termination forward by one month. In bringing his termination date forward, Mr Fentem was no longer eligible to be paid a bonus under the employer's bonus scheme.

Mr Fentem subsequently brought a claim in the Employment Tribunal for unfair dismissal. A preliminary issue for the tribunal was whether or not Mr Fentem had been dismissed. Mr Fentem argued that by invoking the PILON clause and bringing his termination date forward, his employer had dismissed him.

The employer referred the ET to the 1994 case of *Marshall v Hamblin*. This case, decided by the Employment Appeal Tribunal, established that a resignation does not become a dismissal when the employer invokes a contractual PILON clause; it merely brings the date of termination forward. The judge in the Employment Tribunal was bound by *Marshall* and found in favour of the employer. There was no dismissal; therefore Mr Fentem's claim of unfair dismissal was dismissed.

Mr Fentem appealed the decision. He argued that *Marshall v Hamblin* was manifestly wrong and so the EAT should depart from it.

The EAT dismissed the appeal. The circumstances in which the EAT may depart from one of its earlier decisions are "tightly circumscribed" and include instances where a previous decision is "manifestly wrong" meaning the decision is "obviously wrong, without the need for extensive or complicated argument".

Judge Auerbach indicated that though he considered the decision in *Marshall* to be wrong, he did not consider it to be *manifestly wrong* and was therefore bound to follow it. He added that resolution on this question would have to be left to the Court of Appeal.

This decision confirms that where an employee's contract of employment contains a valid PILON clause and the employee resigns, the employer can bring forward the date of termination and this will not turn the resignation into a dismissal. However, leave has been granted to appeal to the Court of Appeal who may overturn the EAT's decision.

For now, employers should be aware that using a PILON clause to bring forward the date of termination following an employee's resignation may be treated as a dismissal in the future. Employers should also ensure that their contracts of employment contain a carefully drafted PILON clause as bringing forward an employee's termination date without a valid PILON clause will amount to a dismissal in any event.

EVENTS SEASON

2022

JUL 19
Practice Makes
Perfect
Masterclass

OCT 6
Settlement
Agreement
Masterclass

NOV 23
Litigation
Lessons
Masterclass



SCRIBS OR PAX?



A local slang quiz on *Yahoo!* has left me wondering how much slang is specific to our part of the world.

Here in the Southampton office, if you get weary of being viciously

But over in our Fareham office, I'm reliably informed, you might shout 'PAX!'

Also, in the Southampton area it's common for a mate to refer to you as 'mush' (pronounced to rhyme with 'bush'). But is it the same in Winchester? I think not. Winchester's probably too posh.

Mush is in use in Portsmouth (slang: Pompey) too. Here you might also get called a 'dinlo' - slang for 'fool'. Especially if you say you'd quite like to sample a Dockyard Oyster. (*You don't want to know.*)

Annoyingly, none of these prime examples of Hampshire wordery find their way into the quiz. I don't want to get squinky, but these compilers, they're a bunch of dinlos.

* This doesn't actually happen. Not without a pre-signed agreement, witnessed by the managing partner.

tickled and/or chased* (look, it's team-building, isn't it?) you might yell 'SCRIBS!' Meaning you'd had enough and wanted out of the game.

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