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JANUARY 2018

“FOOLS RUSH IN WHERE ANGELS FEAR TO TREAD” THE DUTY OF COMMISSIONERS TO ASSIST LAY PERSONS

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The right to legal representation at the employment tribunals is not automatic in matters relating to misconduct and incapacity.

Despite this exclusion, there are always ways and means to argue a right of appearance for any savvy attorney worth their salt.

For those who choose to enter the gauntlet without the advantage of legal assistance, what safe-guards are there to assist you in presenting your case?

Although the rules of evidence are relaxed at employment tribunals, the basic rules and legal principles that govern the proof of facts in legal proceedings remain.

It is these rules and principles which determine whether you win or lose your case – on a ‘balance of probabilities’ of course.

For instance, when a witness, under oath, places a version before the tribunal, that version must be challenged by the opposing party.

A failure to challenge this version will lead to that evidence being accepted as ‘uncontradicted evidence’, or alternatively, a negative inference may be drawn in the matter.

This may well have the consequence of you losing your case!

You may be wondering, how is the

untrained ordinary person expected to know all this legal “stuff”?

It is comforting to know that Commissioners presiding over unrepresented laymen, do in fact, have the duty to “step into the arena”.

The Commissioner’s inquisitorial function entails a duty to assist parties in the arbitration. Although, the Commissioner has a difficult task to “toe the line” by assisting parties, but not going so far as to run a party’s case for them.

It is submitted that relying on a Commissioner to assist you in proceedings is a risky game.

As employment law specialists, we see outrageous conduct by Commissioners misconducting themselves and failing, miserably, to act within the fragile bounds of reasonableness.

In a situation where you are slapped with an unreasonable award, the only remedy to challenge the award is to take the matter on review.

This exercise in litigation is both costly, sluggish and time consuming.

Additionally, under the amendments of the Labour Relations Act, you are required to put up security for the full sum of the award in order to institute the review.

Perhaps the prudent thing to do is to

ensure things are done correctly the first time.

Running any arbitration is a complicated task. It takes stealth and dexterity to ensure the sum of evidence is presented both carefully and skillfully in a manner to secure the best odds.

Kindly appreciate the consequences of rushing forwards into the arena without the wisdom or understanding of the rules at play, and the risk of relying on the Commissioner to assist you. As Alexander Pope once wrote, often ‘fools rush in where angels fear to tread’.



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