

26th January 2009

British Airways has successfully defended a claim brought against it by a number of its employees. In the case of P LUCY & ORS v BRITISH AIRWAYS PLC, 78 cabin crew sought to recover unpaid wages from their employer through the Employment Tribunal.

In 2006, British Airways had closed its Manchester Airport base. Although the cabin staff were not dismissed, they no longer had any flying duties.

They then only received their basic pay, and not any of the allowances they would normally have received had they been flying.

The issue was looked at by the Employment Appeal Tribunal which confirmed that where an employer restricted an employee's work with the result that he could not earn allowances which he was usually paid, he could not claim unlawful deductions from wages before an employment tribunal.

The Employment Judge concluded 'There is an obvious and fundamental difference between basic wages or salary payable periodically to an employee who works or is ready, willing and able to work if no work is provided e.g. he is on "gardening leave" and remuneration which is only earned if specific tasks are carried out, such as commission from sales, allowances for flying or allowances for overnight stays (this is by no means an exhaustive list). The latter form of remuneration, in my judgment, can only become payable to the employees if the applicable task is carried out.'

The tribunal concluded that, since their employment had continued, the employees should have brought their claim before a county court, seeking damages for loss of a chance to earn the allowances. The employees would have to establish that the closure of the base and the failure to roster them for flying duties amounted to a breach of contract on the part of British Airways.

For any advice on how this decision may effect you as an employer or an employee, please contact Craig Oliver on 01392 260297.