Kaur v MG Rover Group Ltd

[2004] EWCA 1507

Court of Appeal

Brooke, Jonathan Parker, and Keene LJJ

2004 Nov 1; 17

Employment—Contract of employment—Collective agreement—Provision in collective agreement relied on by employee as precluding compulsory redundancy—Whether intended or apt to be incorporated as term of employee's contract of employment

The claimant was an employee of the defendant company. When she was threatened with compulsory redundancy, she applied to the court for declaratory relief to the effect that, on a proper construction of her contract of employment, the employer was not entitled to make her compulsorily redundant, contending that provisions of two collective agreements, agreed between the employer and trade unions, had been incorporated into the contract. The judge held, in relation to the first agreement, that the provision relied on was in a part of the agreement which contained merely a statement of collective aims and aspirations, which were not apt for incorporation into an individual contract of employment; but that, in relation to the second agreement, in which it was stated in capital letters that there would be no compulsory redundancy, the provision relied on had been incorporated and was contractually binding, and she granted a declaration that the claimant could not be made compulsorily redundant.

On the employer's appeal and the claimant's cross-appeal-(1)

that, in determining whether a document or part thereof had been incorporated into a contract of employment, the fact that another document was not itself contractual did not prevent it from being incorporated into the contract if that intention was shown as between the employer and the individual employee; but that, even in cases of express incorporation of a document, it was still necessary to consider whether any part of that document was apt to be a term of the contract; and that, when dealing with collective agreements made between an employer and trade unions, there might well be certain provisions which were clearly not intended to give rise to legally-enforceable contractual rights between the employer and the individual employee, and one had to look at the content and the character of the relevant parts to determine whether they were apt to be a term of the individual contract of employment (post, paras 9, 10).

Dicta of Scott J in National Coal Board v National Union of Mineworkers [1986] ICR 736, 773 and of Hobhouse J in Alexander v Standard Telephones & Cables Ltd (No 2) [1991] IRLR 286, para 31 approved.(2)

Dismissing the cross-appeal, that the character of the relevant part of the first collective agreement was overwhelmingly aspirational, and a deliberate distinction was drawn between that part, which was said to consist of "principles", and the other part headed "agreement"; and that there was nothing in the first collective agreement that created any contractual prohibition on an employee being made compulsorily redundant (post, paras 15, 16).(3)

Allowing the appeal, that the issue in relation to the second collective agreement had to be resolved by looking at the words relied on in their context, and that context contained a number of features which indicated that the words relied on were expressing an aspiration rather than a binding contractual term, in particular the previous sentence which described an "objective" and it was only if the objective was achieved that there would be no compulsory redundancy; that, further, it was highly relevant that a subsequent paragraph indicated that avoiding com-

pulsory redundancies was contingent on the co-operation of the workforce as a whole, which***626** made it very difficult to see the reference to "no compulsory redundancy" as an enforceable term in each employee's contract of employment; and that, accordingly, the words relied on by the claimant were not intended, and were not apt, to be incorporated into her individual contract (post, paras 32-36).

Decision of Judge Alton sitting as a judge of the High Court [2004] IRLR 279 reversed in part.

The following cases are referred to in the judgment of Keene LJ:

Alexander v Standard Telephones & Cables Ltd (No 2) [1991] IRLR 286
Johnson v Unisys Ltd [2001] UKHL 13; [2001] ICR 480; [2003] 1 AC 518; [2001] 2 WLR 1076; [2001] 2 All ER 801, HL(E)
National Coal Board v National Union of Mineworkers [1986] ICR 736
Reda v Flag Ltd [2002] UKPC 38; [2002] IRLR 747, PC
R v Hull University Visitor, Ex p Page [1992] ICR 67; [1991] 1 WLR 1277; [1991] 4 All ER 747, CA

The following additional cases were cited in argument:

Anya v University of Oxford [2001] EWCA Civ 405; [2001] ICR 847, CA
Aspden v Webbs Poultry & Meat (Holdings) Ltd [1996] IRLR 521
Gunton v Richmond-upon-Thames London Borough Council [1980] ICR 755; [1981] Ch 448; [1980] 3 WLR 714; [1980] 3 All ER 577, CA
Jenvey v Australian Broadcasting Corpn [2002] EWHC 927 (QB); [2003] ICR 79

APPEAL from Judge Alton, sitting as a judge of the High Court at Birmingham

The claimant, Mrs Kulvinder Kaur, applied in the High Court for declaratory relief to the effect that the defendant employer, MG Rover Group Ltd, was not entitled to make her compulsorily redundant. By a judgment in the High Court at Birmingham on 21 January 2004, Judge Alton granted such relief in respect of one of two collective agreements relied on by the claimant.

The defendant appealed on the ground, inter alia, that the judge had erred in granting declaratory relief on the foundation that certain terms in a collective agreement had been incorporated into the claimant's individual contract.

By respondent's notice the claimant cross-appealed against a finding by the judge that the second of the two collective agreements relied on by the claimant had not been incorporated as a term of her contract of employment.

The facts are stated in the judgment of Keene LJ.

James Goudie QC and *Akhlaq Choudhury* for the defendant employer.

Brian Langstaff QC and *Jason Galbraith-Marten* for the claimant employee.

Cur. adv. vult.

17 November. The following judgments were handed down.KEENE LJ

This appeal and cross-appeal raise the issue of whether certain parts of collective agreements between an employer and trade unions were incorporated into and became terms of the contract of employment of the***627** individual employee. The respondent employee, Mrs Kaur, is a staff grade employee of the appellant at its Longbridge site in the West Midlands, where it carries on a car manufacturing business and where another group company carries on an engine and gearbox manufacturing business. She had, when these proceedings began, been continuously employed by the employer or its predecessors in business for over 14 years. But in March 2003 she was threatened with compulsory redundancy.

She claimed declarations that, on a proper construction of her contract of employment, the employer was not entitled to make her compulsorily redundant. Her claim was that the provisions of two collective agreements had been incorporated into her contract of employment and that those provisions had the effect claimed. By the time of trial the threat of compulsory redundancy had been lifted for the employee, but the issues raised remained highly relevant for many other employees and therefore, by agreement between the parties, the claim was pursued to judgment.

Judge Alton, Designated Mercantile Judge, sitting as a judge of the High Court at Birmingham, refused declaratory relief in respect of one of the two collective agreements but granted it in respect of the other and consequently declared that the employee could not be made compulsorily redundant. Both sides now appeal against that decision.

The employee was employed at the relevant time under a contract of employment concluded in December 2000. She had accepted terms of employment set out in a letter dated 12 December 2000 from the employer, the first paragraph of which read as follows:

"I have pleasure in offering you the following appointment with MG Rover Group Ltd. This document is a statement of the terms and conditions of your employment contract. The standard conditions of employment included with this employment contract, as may be amended by the company from time to time, apply except where specifically varied by the conditions set out in this letter."The letter then went on to provide certain details of her employment, including her basic hours, her annual salary and her job title. The letter itself said nothing about termination of her employment.

The standard conditions of employment, referred to in the opening paragraph of that letter, contained a number of provisions but of most relevance for present purposes are conditions 1 and 13. Condition 1 is headed "General" and the material part of it provides:

"Employment with the company is in accordance with and, where appropriate, subject to:

-the specific and standard conditions of employment contained in this employment contract;

-collective agreements made from time to time with the recognised trade unions representing employees within the company;

-current employment rules (contained in the Rover Group Associates' Code of Conduct) and those conditions specifically applying at your work location;

-the rules of the Rover Group Pension Scheme which is the subject of a contracting-out certificate issued under the Pension Schemes Act 1993;

-relevant employment legislation;***628**

-company policies and procedures.

"The collective agreements mentioned above provide details of rate of pay, method of calculating pay, benefits and conditions which are currently in force and relate to your job/classification."

It is the reference both in the second bullet point and in the final sentence quoted to "collective agreements" which are relied on by the employee.

Condition 13 in these standard conditions of employment is headed "Notice of termination of employment". It states:

"Should you wish to leave the company you must give at least one month's notice. Should the company wish to terminate your employment, for any reason other than gross misconduct or repudiation of your employment contract, you will receive a period of notice not less than that specified below ..."There then follows a table, indicating various periods of notice, depending on the employee's length of continuous employment.

The two collective agreements relied on by the em-

ployee are, first, a document entitled "Rover Tomorrow-The New Deal", which was agreed in late 1991/early 1992, and secondly a document entitled "Small and Medium Cars 'The Way Ahead' Partnership Agreement", which bears the date July 1997. For the sake of brevity I shall refer to these as "The New Deal" and "The Way Ahead". There was subsequently a further collective agreement in November 1997, known as the consolidated agreement, but for reasons to which I shall come it is unnecessary to deal with that in any detail.

Before looking at the detailed provisions of The New Deal and The Way Ahead, it is convenient to consider the legal principles applicable to the incorporation of another document or part thereof into a contract of employment. Both parties accept the summary of such principles to be found in the judgment of Hobhouse J in Alexander v Standard Telephones & Cables Ltd (No 2) [1991] IRLR 286, para 31:

"The principles to be applied can therefore be summarised. The relevant contract is that between the individual employee and his employer; it is the contractual intention of those two parties which must be ascertained. In so far as that intention is to be found in a written document, that document must be construed on ordinary contractual principles. In so far as there is no such document or that document is not complete or conclusive, their contractual intention has to be ascertained by inference from the other available material including collective agreements. The fact that another document is not itself contractual does not prevent it from being incorporated into the contract if that intention is shown as between the employer and the individual employee. Where a document is expressly incorporated by general words it is still necessary to consider, in conjunction with the words of incorporation, whether any particular part of that document is apt to be a term of the contract; if it is inapt, the correct construction of the contract may be that it is not a term of the contract. Where it is not a case of express incorporation, but a matter of inferring the contractual intent, the character of the document and the relevant part of it and whether it is apt to form part of the***629** individual contract is central to the decision whether or not the inference should be drawn."

Mr Langstaff, on behalf of the employee, makes the point that there was no express incorporation in that case, which distinguishes it from the present. I accept that, but even in cases of express incorporation of a document it is still necessary, in Hobhouse J's words, to consider whether any part of that document "is apt to be a term of the contract". When dealing with collective agreements made between an employer and trade unions, there may well be certain provisions which are clearly not intended to give rise to legally-enforceable contractual rights between the employer and the individual employee. As Scott J indicated in National Coal Board v National Union of Mineworkers [1986] ICR 736, 773 such collective agreements may deal with the appropriate mechanisms for dealing with industrial disputes or for collective bargaining, matters patently not intended to be legally enforceable by the individual employee. One must therefore look at the content and the character of the relevant parts of the collective agreement to determine whether they are apt to be a term of the individual contract of employment.

With that criterion in mind, I turn to the details of the two collective agreements in issue in the present case. As the judge pointed out, the earlier document, The New Deal, is in two parts. One part is headed "Agreement between Rover Group Ltd (The Company) and the Trade Unions", and a number of unions are then identified. Its introductory clauses refer to the competitive pressures on Rover and to achieving "Success through people", adding that: "The backcloth against which that success is to be generated is summarised in the principles of our new partnership which are set out in the document Rover Tomorrow-The New Deal-(Attachment 1)." Clause 3 states: "The parties agree to the principles set out in 'Rover Tomorrow-The New Deal'. In ad-

dition this agreement details consequential amendments to terms and conditions of employment." There then follow a number of provisions dealing with such matters as grading, holiday entitlement and sick pay. Clause 12 is entitled "Notice" and provides:

"12.1 With effect from 16 April 1992 the minimum notice period from the company to the employee will be one month. 12.2. The notice period from the employee to the company remains as specified in individual contracts."Nowhere is there any mention of redundancy. Clause 13.1, part of a section headed "Interpretation", states in its opening sentence: "Other terms and conditions of employment remain unchanged." This part of The New Deal is then signed on behalf of the company and the unions.

The part which is said to be attachment 1, setting out "the principles of our new partnership", begins with the statement: "We need a workforce distinguished only by individuals'/teams' contribution to the company." A number of matters are then dealt with, including health checks, payment by credit transfer and the phasing out of productivity bonus schemes. Paragraph 7 deals with providing a good working environment. Paragraph 8 is the crucial one for the employee's purposes. It states:

"Employees who want to work for Rover will be able to stay with Rover. Necessary reductions in manpower will be achieved in future,***630** with the co-operation of all employees, through retraining and redeployment, natural wastage, voluntary severance and early retirement programmes."It is worth noting the terms of the following paragraph, paragraph 9, which reads: "Constant open and honest two-way communications with employees throughout the company will be the norm. The process of daily, weekly, monthly and annual employee briefings will be strengthened."

The judge concluded that the principles set out in this second part of The New Deal were not apt for incorporation, there being no intent that these principles should be regarded as anything other than a statement of collective aims and aspirations, save to the extent that they were translated into specific provisions by the accompanying "agreement". Drawing attention to clause 3 of the first part of the document, the agreement part, she concluded that it drew "a deliberate distinction between the two elements of principles and those parts of the principles that are to flow into consequential amendments to the individual terms and conditions". Those parts of the principles which were not reflected in the amendments contained in the "agreement" part of the document were not intended to be incorporated in individual contracts of employment. They were expressions of future aim or expectation not appropriate or apt for incorporation.

That conclusion about The New Deal is now challenged by the employee through the cross-appeal, and it is helpful to deal with that challenge before turning to consider the issues concerning The Way Ahead. It is submitted on behalf of the employee that the distinction drawn by the judge between the two parts of The New Deal was unwarranted. Some of the provisions in the agreement part are incapable of being given contractual force, while some of the provisions in the so-called principles part are apt for incorporation. Mr Langstaff places particular reliance on the first sentence of clause 3 of the agreement part, which states that "the parties agree to the principles set out in Rover Tomorrow-The New Deal". This shows, it is said, that the principles were intended to have contractual force where a particular principle was apt for incorporation, and paragraph 8 of those principles, indicating that no employee would be made redundant save on a voluntary basis, was one such principle.

Like the judge below, I find this argument wholly unpersuasive. The character of the principles part of The New Deal is overwhelmingly aspirational, as the opening paragraph and paragraph 9, set out earlier, illustrate. Even though there are some limited elements of the agreement part which are incapable of being legally enforced as part of an indi-

vidual contract, there can be no doubt that a deliberate distinction was drawn between the principles part and the agreement part of this document by those who were party to it. It is entirely understandable that the former part was said to consist of "principles", since they are for the most part expressed in terms of general purpose.

Certainly clause 3 of the agreement part records that the parties were agreeing to those principles, but that does not advance the employee's case. The parties were the company and the trade unions, and they agreed those principles as part of a collective agreement. That in itself tells one nothing about the aptness of those principles for incorporation into individual contracts nor about the intention of any party to those contracts. What is***631** much more significant in that regard is the next sentence in clause 3, which says in terms that "in addition, this agreement details consequential amendments to terms and conditions of employment". To my mind, the meaning of that is clear, namely that in so far as the terms and conditions of employment of individual employees were to be amended as a result of the collectively agreed principles, such amendments were to be found in "this agreement", the agreement part of the New Deal. That is a powerful indication that the principles themselves were not to be regarded as amending contracts of employment, save to the extent that such amendments were set out in the agreement part of this document. Paragraph 8 of the principles was not carried through into those amendments. That shows that it was not intended that that paragraph should have any contractual force. That is reinforced by the statement in clause 13.1 of the agreement part that other terms and conditions of employment remained unchanged. I conclude that nothing in The New Deal creates any contractual prohibition on an employee being made compulsorily redundant.

I turn therefore to The Way Ahead agreement of July 1997. This is a single document in four sections: Introduction, Operating Guidelines, Principles of Partnership, and Appendices. The first of the Appendices is in fact The New Deal document, and this is referred to in the Introduction section as having been a significant step forward. It is then said that The Way Ahead represents "further improvements in the way we all work in order to compete with the best in the world". Job security is mentioned in the final paragraph of the Introduction, that paragraph reading as follows:

"If Rover is to deliver its commitment of job security, we need to continually develop new improved ways of working to move the business forward, increase capacity, manage change and respond to the ever increasing competitive threat. Building upon 'Rover Tomorrow-The New Deal' and embracing new working practices can only serve to improve our competitive position within the global market place."

The next section, which is actually headed "Operating Principles", is not said by the employee to be of any contractual significance. But the third section, which according to the contents page is entitled "Principles of Partnership", is at the heart of this appeal. The section begins with four paragraphs headed "Philosophy", the opening sentence stating:

"The challenge of strong competition gives a clear message-if we wish to survive we must be competitive in terms of efficiency, quality, productivity, flexibility and employee contribution. We must all pursue the elimination of waste in order to achieve continuous improvement in every aspect of the business."

The next part of this section is headed "Job Security", and I set out its three paragraphs in full:

"2.1 It will be our objective to ensure that the application of the 'Partnership Principles' will enable employees who want to work for Rover to stay with Rover. As with the successful introduction of 'Rover Tomorrow-The New Deal' THERE WILL BE NO COMPULSORY REDUNDANCY.***632**

"2.2 The company recognises that its employees are

the company's most valuable asset.

"2.3 Any necessary reductions in manpower will be achieved in future, with the co-operation of all employees, through natural wastage, voluntary severance and early retirement, after consultation with trade unions."This is followed by subsections headed "Single status company", "No lay-off subject to co-operation", "Single status sick pay" and " Company workwear for all". Subsection 7 is entitled "One month's minimum notice" and provides: "The minimum period of notice for all employees will be one month." Subsection 8 deals with "Flexibility" and begins: "People will be expected to be flexible subject to their ability to do the job, after training if necessary, and subject to safe working practices being observed." Finally, there are subsections on "Manpower effectiveness", "Joint communication", "ADP and joint training" and "Items for further discussion and principled agreement".

The judge noted that this agreement, which applied only to the Longbridge site, contained provisions which were on the whole of a general nature apt for incorporation into individual contracts. She instanced amongst other things the sick pay and notice period provisions. Others she regarded as being inapt for incorporation, "being either general statements of expectation or exhortation, commitments to agree future rules and procedures and agreements as to collective processes which are not apt for incorporation ..." She then focused on paragraphs 2.1 to 2.3, saying, at para 48 of her judgment:

"Had the second sentence of paragraph 2.1 not been included I would have concluded that the provision simply set out Rover's aim or objective-achievement of which would depend upon the tripartite co-operation of employer, trade union and employees as individuals and collectively-and that properly construed it provided no guarantee of achievement of the aim or objective and was not intended to provide such guarantee. The provision would have belonged more naturally with the general principles to be found in the Introduction and paragraphs 3.1 to 3.3 of the Principles. The inclusion of the words which are deliberately and emphatically printed in bold do, however, change the overall thrust of the paragraph, which become to the effect that not only is compulsory redundancy the aim-it will also be the consequence of and the assurance behind the introduction of The Way Forward with its important provisions requiring flexible working, co-operation by avoidance of unconstitutional action, manpower effectiveness and a de-manning procedure, all of which provisions I find (and the claimant does not dispute) were apt for incorporation."I think that the word "apt" in that final sentence must be read as "inapt" if the sentence is to make sense. The judge then rejected an argument by the employer that the incorporation of paragraph 2.1 was precluded by the provisions in the various agreements, including the standard conditions of employment condition 13 (set out in para 7 of this judgment), for the giving by the employer of various periods of notice. She accepted that her conclusion meant that the employer's right to terminate on notice was***633** fettered where the reason for giving notice was the desire to make the employee redundant compulsorily. But she held that the right of the employer to terminate on notice had to be read as subject to the agreement that the employer would not terminate pursuant to that provision where the reason was redundancy.

In the event the judge made a declaration that paragraph 2.1 of section 3 of The Way Ahead was incorporated into the employee's terms and conditions of employment and remained contractually binding, and that on a true and proper construction of her contract of employment the employee could not be made compulsorily redundant.

Mr Goudie, on behalf of the employer, advances two submissions. First, he contends that the judge was wrong to conclude that paragraph 2.1 of The Way Ahead was incorporated into the employee's individual contract of employment as a term of it. Secondly, and in the alternative, he submits that, if that paragraph was so incorporated, it could not prevail over the express language of condition 13 of the standard conditions of employment which gives

the employer an unfettered right to terminate on notice.

On the first of those issues, it is argued that whole of The Way Ahead document was merely a successor to the principles part of The New Deal, and consequently none of it was incorporated into the individual contracts of employment. The Way Ahead simply contains statements of principle not apt for incorporation. In particular, paragraph 2.1 cannot be seen as apt for incorporation: it begins by making it clear in the first sentence that enabling employees who want to stay with the employer to do so is an "objective", and the second sentence, albeit partly in capital letters, is only making the same point. In addition, that sentence refers back to The New Deal and shows that the situation under that earlier document is not being changed by this collective agreement. Moreover, as paragraph 2.3 shows, achieving no compulsory redundancies would be contingent on the co-operation of other employees, which makes it quite inappropriate for it to be a contractual term for an individual employee. This sheds light on the proper approach to the reference in paragraph 2.1 to no compulsory redundancies, which is clearly a prediction of the future rather than a contractual commitment.

On the effect of paragraph 2.1 if it is incorporated into individual contracts of employment, Mr Goudie relies on a number of authorities in support of his argument that the paragraph does not prevail over the employer's express right to terminate on notice. In particular, cases such as Johnson v Unisys Ltd [2001] ICR 480 and Reda v Flag Ltd [2002] IRLR 747 show how reluctant the courts are to accept a fetter on the employer's right to dismiss on notice where there is an express term in the contract empowering the employer to do so. The same approach is to be found in R v Hull University Visitor, Ex p Page [1992] ICR 67 in the Court of Appeal. Moreover, to enable paragraph 2.1 to have effect as an exception to the employer's right to terminate on notice would require the employer to specify the reason for dismissal so as to establish whether it was for redundancy or not, and yet there is no contractual obligation in the present case to give any reason for dismissal on notice.

I will deal with this second line of argument first. The authorities cited by Mr Goudie seem to me to have little bearing on the point raised in the present case. The Johnson and Reda cases were both concerned with whether the court was prepared to imply a term into the contract of***634** employment so as to cut down the express right under the contract to terminate on notice. If paragraph 2.1 of The Way Ahead is a term of the contract through incorporation, it is an express term and one has to see therefore what meaning is to be attached to it and to the term dealing with termination on notice when the contract is read as a whole. That is a quite different situation from that being considered in Johnson and in Reda.

It is right that in Ex p Page the court was concerned with two express terms, one in Mr Page's letter of appointment which provided for either party to terminate on three months' notice in writing, and one in the university's statutes empowering the university to dismiss him for good cause. The Court of Appeal held that he could be dismissed on either basis and that good cause was not required if three months' notice was given. So the right to terminate on notice was not cut down by the "good cause" term. But as the court made clear, that was a question of construction of the particular contractual documents and terms involved in that case. There was no general principle of law established by that decision to the effect that notice clauses in such contracts are to prevail over other express terms concerned with termination. It will in all cases be a matter of construing the individual contract of employment.

In the present case it seems to me that, if paragraph 2.1 of The Way Ahead is incorporated into the individual contract, it and the notice provision in condition 13 could be read together in a compatible way. There is no reason why the contract could not be read as providing the right for the employer to ter-

minate on the specified notice, except in a redundancy situation where the employee was unwilling to leave. It could be a somewhat strange end result, since in all other situations the employer could terminate on notice without having any good reason and without the dismissal being wrongful as a breach of contract. Whether it would be an unfair dismissal in such circumstances under the Employment Rights Act 1996, Part X, has no bearing on the contractual position. Contractually the parties could agree to the state of affairs I have described, and the employee has a statutory right to a written statement of the reasons for dismissal under section 92 of that Act, with the result that it would not be impractical for the reason to be established. Therefore I do not accept that the notice provisions would prevail in the present case, if paragraph 2.1 of The Way Ahead is a term of the contract through incorporation.

I return therefore to that vital issue of incorporation. On this it is the employee's case, first, that the entire wording of The Way Ahead became part of the individual contract of employment, because the standard conditions of employment provided that employment with the company was "subject to" collective agreements made with the recognised trade unions. This first contention, however, overlooks the fact that the standard conditions of employment actually state that "employment with the company is in accordance with and, *where appropriate*, subject to ... collective agreements" (my emphasis). Moreover, parts of The Way Ahead are clearly inapt for a role as contractually binding terms. Thus paragraph 10 refers to "a commitment by management and trade unions to communicate effectively on business issues". That cannot sensibly be regarded as having been incorporated into the contracts of employment of individual employees. The document as a whole cannot have been intended to have been so incorporated and the words "where appropriate" make that***635** clear. The individual paragraphs in The Way Ahead have to be considered to see whether, in any particular instance, the provision is apt for incorporation.

That takes one to Mr Langstaff's alternative and main submission, namely that paragraph 2.1 is apt for incorporation. He points to the context in which The Way Ahead was agreed: a situation of very considerable competitive pressure on the employer, as a result of which it wished to achieve more flexible working practices. The document shows that the unions were agreeing to that, but the quid pro quo was the company's agreement that there would be no compulsory redundancies. So this commitment by the employer was not unilateral but part of a bargain, to which the employer should be held. The document speaks of a "commitment of job security" in the Introduction section and this is what it is: a promise, not a mere prediction of the future.

It is argued that this is not to be equated with the principles section of The New Deal. It is expressly said to be an improvement on that. Mr Langstaff acknowledges that the first sentence of paragraph 2.1, speaking of "our objective", is not intended to give rise to enforceable rights but he submits that the second sentence is. Full weight should be given to the fact that that sentence is emphasised by being printed in capitals, something which the judge regarded as important.

I can accept that The Way Ahead does generally have the character of a bargain, struck between the employer and the unions, and that what is said in it about compulsory redundancy reflected the statements about more flexible working by the workforce. But that does not get the employee very far at all. It is what one would expect of a collective agreement, which as both sides accept is an agreement but not something which is in itself normally enforceable at law. At a collective level, various assurances and statements as to the future were undoubtedly made by both the employer and the trade unions. But the fact that paragraph 2.1 was not unilateral but part of such a package tells one nothing about its aptness for incorporation as a term of individual contracts of employment.

That issue is one to be resolved by looking at the words relied on in their context. That context con-

tains a number of features, which seem to me to indicate that those words are expressing an aspiration rather than a binding contractual term. First, the preceding sentence in the same paragraph is important. It describes enabling employees who want to work for Rover to stay with Rover as "an objective", something therefore which it is hoped to achieve. But that objective is the very same thing as saying that there will be no compulsory redundancy. It is only if the objective is achieved that there would be no compulsory redundancy. It follows that the character of the crucial second sentence is to be viewed in the light of the first sentence, indicating that this is an objective, rather than a binding promise.

Secondly, that is reinforced by the opening words of the second sentence "as with the successful introduction of 'Rover Tomorrow-The New Deal' ", which suggest that the statement about no compulsory redundancy is to be seen as a repeat of the earlier position in The New Deal. Yet, as I have already concluded, the position under The New Deal was one where the statements about employees being able to stay with Rover were not contractual commitments. Thirdly, paragraph 2.3 of The Way Ahead is relevant, as it is the positive counterpart of the statement about no***636** compulsory redundancy. Paragraph 2.3 spells out how future reductions in manpower will be achieved and so, implicitly, how compulsory redundancies can be avoided. It is the other side of the coin to paragraph 2.1. But it states that such reductions "will be achieved in future, with the co-operation of all employees, through natural wastage ... (etc)". As Mr Goudie submits, this indicates that avoiding compulsory redundancies is contingent on the co-operation of the workforce as a whole, whatever that may mean. That makes it very difficult to see the reference to "no compulsory redundancy" as an enforceable term in each employee's contract of employment, both because of the vagueness of the language of paragraph 2.3 and because any entitlement would depend on the activities of others in the workforce. I regard paragraph 2.3 as highly relevant when one comes to consider the significance of paragraph 2.1. Seen together, the aspirational nature of the company's statement is plain, as indeed is its collective rather than individual character.

I conclude, therefore, that the words relied on by the employee in paragraph 2.1 of The Way Ahead were not intended to be incorporated into the contracts of employment of individual employees and were not apt for such incorporation. In so far as they formed part of a bargain with the unions, the commitment was solely on a collective basis. For these reasons and, in respect of the cross-appeal, for the reasons given earlier in this judgment, I would allow the appeal and dismiss the cross-appeal.JONATHAN PARKER LJ

I agree.BROOKE LJ

I also agree.

*Appeal allowed. Cross-appeal dismissed. Leave to appeal refused.*Reported by Matthew Brotherton Esq, Barrister
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