

# Business & Employment Brief

Your Legal Team for Life

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### The Effect of Summary Dismissal After Notice Has Been Given

In *Alders v M-Choice* the Employment Appeal Tribunal had to decide what should happen when an employer summarily dismissed an employee when they were already on garden leave and under notice of termination.

Miss Alders was employed on 1st February 2010 and was contractually entitled to six months notice. On 26th July she was put on garden leave and told that her employer was “ending the work relationship as at February 1st 2011 at the latest.”

This meant that she had been employed for a year so Miss Alders submitted a claim for unfair dismissal on 11th January 2011. On 21st January 2011 the Company then wrote to Miss Alders informing her that her em-

ployment was being terminated with immediate effect. She subsequently submitted a fresh claim form claiming that she had been unfairly dismissed for asserting a statutory right to bring an unfair dismissal claim. Such a claim does not require one years service as is usually the case with unfair dismissal claims. The EAT held that her effective date of termination was 21st January when her employment was terminated with immediate effect. Her unfair dismissal claim for asserting a statutory right was valid but the EAT ordered that the matter be referred to a fresh Tribunal to decide whether she was actually dismissed for asserting a statutory right or whether there was some other reason.

### Minimum Wage Whilst Asleep? Do Wake Up!

The EAT has held, on the facts, that a pub manager who slept at the premises overnight was not entitled to the national minimum wage during sleeping hours. On the facts she had no responsibilities during the night and her position had to be contrasted with that of a night watchman or night sleeper in a residential home who do have responsibilities during such times.

### Conspiracy Theory?

A Principal Intelligence Analyst working for South Yorkshire Police was not unlawfully dismissed on grounds of his philosophical belief.

His beliefs were that the 9/11 and 7/7 terror attacks were ‘false flag’ operations authorised by the UK and US governments and that the media was controlled by a ‘global elite seeking a new world order’.

The Tribunal accepted that his beliefs were genuinely held and related to weighty and substantial aspects of humanity. However, his claim failed in that his beliefs did not meet minimum standards of coherence and cohesion and were “absurd”.

### Kate Middleton on Employment Issues



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### Companies Fined after Death from Fall at Work

By Lauren Dimmack

Lauren Dimmack on  
Commercial Matters



Two companies have been fined a total of £450,000 and ordered to pay costs after health and safety failures led to a maintenance worker falling to his death.

Christopher Booker, 49, was working at Aberthaw Power Station when the accident happened in 2007. The power station was undergoing renovations, including work on a deep pit in the water cooling system. This necessitated inserting equipment into the pit to prevent sea water from entering it during high tides while the work was in progress. Mr Booker and eight other workers were performing urgent modification work on the equipment to ensure that the pit was effectively sealed.

Sections of the floor grating at the top of the pit had been removed to allow easier access to it, leaving gaps in the walkway. As night fell, electric lights were turned toward the inside of the pit, where the modifications were being made, leaving the walkway above the pit in near darkness. Mr Booker fell through a gap in the walkway into the pit 12 metres below and died as a result of multiple injuries to his chest and pelvis.

The Health and Safety Executive (HSE) conducted an investigation and found that, following the removal of the floor gratings, a large opening had been left unprotected and inadequate precautions had been taken to protect those working near it. There was also 'confusion and misunderstanding'

between RWE npower, which owned the power station, and AMEC Group Ltd., the principal contractor, over who was responsible for controlling the work being done at the time Mr Booker fell.

RWE npower pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £250,000. AMEC Group Ltd. pleaded guilty to breaching Regulation 11(1) of the Management of Health and Safety at Work Regulations 1999 and was fined £200,000. The two companies were also ordered to pay £30,000 each in costs.

HSE inspector Caroline Bird said, "Inadequate planning and a poor choice of safety control measures meant that a very obvious hazard remained. [...] Both companies had a duty of care to Mr Booker that they failed to meet – with catastrophic consequences. This awful incident could so easily have been prevented had the correct safety measures been taken".

Employers have a duty to assess risks to the health and safety of their workers, and to members of the public who may be affected by their business activities, and to take reasonable steps to remove or reduce those risks. Employers who fail to do so are likely to face prosecution and substantial fines, as well as civil claims for compensation, if an employee or visitor to their premises is injured.

If you would like advice on this subject contact Lauren Dimmack on 01276 681217 or e-mail:

[lauren.dimmack@brooks-partners.co.uk](mailto:lauren.dimmack@brooks-partners.co.uk).

### New Minimum Wage Rates by June Hood

Employers are reminded that new National Minimum Wage (NMW) rates came into force on 1 October 2011.

The revised rates are as follows:

- The adult hourly rate of the NMW has increased from £5.93 to £6.08;
- The development rate (which covers workers aged 18-20 years) has increased from £4.92 to £4.98; and
- The rate for workers aged 16 and 17 has increased from £3.64 to £3.68.

The apprentice rate, for apprentices under 19 or those aged 19 or over and in the first year of their apprenticeship, has risen from £2.50 to £2.60 per hour. From 1 October 2011, the accommodation offset rose from £4.61 per day to £4.73. Following a recommendation from the Low Pay Commission, the Government has issued guidance for employers on the payment of the NMW for interns and those carrying out work experience. Whether or not someone is a worker and is therefore entitled to be paid the NMW depends on the arrangements in place. The guidance includes a new worker checklist and examples of case studies