

Insights

CAN A CONDITIONAL JOB OFFER BE WITHDRAWN AFTER ACCEPTANCE?

KANKANALAPALLI (K) V LOESCH ENERGY SYSTEMS (LOESCH)

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SUMMARY

Job offers are frequently made “subject to” various conditions. The conditions might include satisfactory references, right to work checks or a medical examination. The nature of these conditions can become important where, for example, the prospective employer changes its mind and wants to withdraw the offer. It might be relatively painless to withdraw an offer of employment before it is accepted, but once it is accepted, can the prospective employer still withdraw the offer on the basis that the “subject to” conditions have not been fulfilled?

In this case the EAT analysed whether a job offer with conditions that were already accepted (a) formed a binding contract that could not be withdrawn, or (b) a failure to meet the “subject to” conditions meant there was no contract, so the offer could be withdrawn.

K made a successful application to Loesch for a senior role as a Project Manager. He was sent an offer letter. The offer was conditional on receiving satisfactory references, completion of a right-to-work check and a six-month probationary period. No notice period was mentioned.

K accepted the offer and carried out a good deal of work to prepare, including arrangements for spending substantial time overseas. He sent through details of his referees and copies of his right to work checks. There was correspondence between K and Loesch about overseas accommodation.

However, before K started work, Loesch experienced difficulties with the project and for reasons associated with the project (not K), Loesch withdrew K’s offer of employment.

K brought proceedings at the tribunal for breach of contract.

- K argued that he had accepted the offer, provided reference details, right to work checks and was prepared to work the six-month probationary period. He argued that the contract was formed when he accepted the offer, and the conditions were conditions **subsequent**, in that there was already a contract and Loesch was only entitled to terminate the contract if he failed to fulfil those conditions.
- Loesch argued that the conditions were conditions **precedent**, meaning a binding contract could only be formed if K fulfilled the conditions. Loesch argued there was no contract to breach because K had not fulfilled the conditions.

There was also the issue of notice. If K was right and Loesch had breached the contract, the remedy would be damages equivalent to his contractual notice period. In the absence of a notice period being agreed, a term of reasonable notice had to be implied into the contract.

The tribunal agreed with Loesch. The “subject to” conditions on the offer were conditions precedent and no contract existed until they had been fulfilled. Loesch showed that, although K had provided details of referees, they had not yet been contacted, and the right to work checks were not completed - neither was the probationary period. It was held there was no contract and Loesch’s withdrawal of the offer was lawful. As there was no contract, there was no notice period.

K appealed to the EAT. The EAT held that conditional “subject to” job offers could be conditions precedent **or** subsequent - that was a question of fact for the tribunal. There was no magic in the words “subject to”.

The EAT looked at the documentation/circumstances and took the view that the conditions were subsequent. There was nothing in the documentation to suggest that no contract would be formed unless the conditions were met, and Loesch’s wording stated, for example, that if satisfactory references were not received, K’s employment would be “terminated”. Loesch could only terminate an existing contract, so this was not the language of a condition precedent. The EAT also took into account the fact that one of the conditions was a probationary period, which was clearly a condition subsequent (there had to be a contract in place for K to work a probationary period).

In terms of a period of reasonable notice, the EAT took into account that:

- the role was a senior one;
- K was travelling to a different country to take up the post; and
- The interview process had taken several months and Loesch had suggested that K took on a 12-month rental property overseas.

In these circumstances, with a senior role involving months of preparation, the EAT held that a period of three months was reasonable and should be implied into the contract.

The appeal was upheld, Loesch was in breach of contract, and the damages would be based on the implied contractual notice period of three months.

The key takeaway is the nature of conditional contracts. In this case the offer had been accepted, which would make a simple withdrawal difficult, but there was still the question of whether the conditions were precedent or subsequent. It seems clear that, if an employer wants conditions to be precedent, even after an offer has been accepted, this should be made very clear in the wording of the offer. An important factor in the EAT's decision was that, in this case, it was not clear.

If you would like to discuss this case further or have any queries about its implications, please get in touch.

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MEET THE TEAM



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