

Union wins Supreme Court fight with Tesco over 'fire and rehire' plans



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A union has won a [Supreme Court](#) battle against [Tesco](#) over so-called proposals to “fire and rehire” workers on less favourable terms.

The Union of Shop Distributive and Allied Workers (Usdaw) took legal action over the supermarket chain’s proposals to fire staff at some distribution centres and rehire them on lower pay in 2021.

After the [High Court](#) ruled in the union’s favour in 2022, Tesco successfully appealed against the decision the same year.

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an end whenever it suited Tesco's business purposes to do so

Lord Burrows and Lady Simler

The union then took the case to the country's highest court, with five Supreme Court justices ruling unanimously on Thursday that Tesco should be blocked from dismissing the staff.

The case arose after Tesco planned to close some of its distribution centres in 2007, and offered staff increased "retained pay" for them to relocate.

In 2021, the chain wished to bring "retained pay" to an end and told staff that the enhancement would be removed in return for a lump sum, or their contracts would be terminated and then reoffered on the same terms, but without the increased salary.

Usdaw argued that "retained" pay was described as "permanent" in the staff's contracts, meaning it could not be removed.

Tesco argued that bosses were using a "contractual mechanism" open to employers.

But in a judgment backed by Lord Reed, Lord Leggatt and Lord Lloyd-Jones, Lord Burrows and Lady Simler said: "Objectively, it is inconceivable that the mutual intention of the parties was that Tesco would retain a unilateral right to terminate the contracts of employees in order to bring retained pay to an end whenever it suited Tesco's business purposes to do so.

"This would have been viewed, objectively, as unrealistic and as flouting industrial common sense by both sides.

"It would have been open to Tesco to negotiate a longstop date for the entitlement to retained pay or to make clear that the retained pay could be withdrawn if an employee were dismissed with notice and then re-employed in the same role. Neither was done."

Usdaw took legal action alongside three employees, who are also union representatives, who work at distribution centres in [Daventry](#), [Northamptonshire](#), and Lichfield, Staffordshire.

The justices said that at the start of the legal action in 2021, 367 union members were affected across the UK, including 324 at the distribution centre in Livingston, Scotland.

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Paddy Lillis, Usdaw

They said the use of the word “permanent” in their contracts “conveys that the right to retained pay is not time-limited in any way and would continue to be paid to employees for as long as their employment in the same role continues”.

They added that while Tesco could “dismiss for any other unrelated reason”, the terms meant it could not terminate a contract “for the purpose of removing or diminishing the right of that employee to receive retained pay”.

Following the ruling, Paddy Lillis, Usdaw’s general secretary, said: “These sorts of tactics have no place in industrial relations, so we felt we had to act to protect those concerned.

“We were very disappointed with the outcome in the Court of Appeal but always felt we had to see this case through.

We accept the Supreme Court’s judgment. Our colleagues in our distribution centres play a really critical role in helping us to serve our customers and we value all their hard work.

Tesco

“We are therefore delighted to get this outcome, which is a win for the trade union movement as a whole.”

A Tesco spokesperson said: “We accept the Supreme Court’s judgment. Our colleagues in our distribution centres play a really critical role in helping us to serve our customers and we value all their hard work.

“Our objective in this has always been to ensure fairness across all our DC colleagues. Today’s judgment relates to a contractual dispute brought on behalf of a very small number of colleagues in our UK distribution network who receive a supplement to their pay.

“This supplement was offered many years ago as an incentive to retain certain colleagues and the vast majority of our distribution colleagues today do not receive this top-up.

“In 2021, we took the decision to phase it out. We made a competitive offer to affected colleagues at that time and many of them chose to accept this.

“Our aim has always been to engage constructively with Usdaw and the small number of colleagues affected.”

The Government has previously outlined plans to ban “fire and rehire” policies and exploitative zero-hours contracts, as well as enforce more rights from a worker’s first day in a job, including sick pay.