

UK's largest retailer loses Supreme Court 'fire and rehire' fight

Tesco says it will accept a Supreme Court ruling in a so-called 'fire and rehire' case amid government efforts to bolster workers' rights.

The Union of Shop Distributive and Allied Workers (Usdaw), along with three of its members at [Tesco](#) who also represent the union, took legal action over proposals in 2021 to fire staff at some distribution centres and rehire them on lower pay.

The case, which originally involved more than 360 workers – the majority at Livingston in West Lothian – arose after the supermarket chain offered staff higher “retained pay” to relocate in 2007.

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In 2021, the UK's largest retailer announced plans to bring retained pay to an end and said that those affected would receive a lump sum instead.

If the offer was not accepted, the company said 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 while Tesco said bosses were using a legitimate “contractual mechanism” open to employers.

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The Supreme Court judgment followed earlier court wins for both parties – latterly Tesco at the Court of Appeal.

The five Supreme Court justices ruled unanimously that Tesco should be blocked from dismissing the staff.

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They 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.

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“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Tesco to negotiate a longstop date for the entitlement to retained pay or to make clear that the retained pay could be withdrawn if an employee were dismissed with notice and then re-employed in the same role.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.”

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

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.

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.

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“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.”