

When you should rush to a decision before having the facts: contractual appeal time limits can be strict

By [Matthew Curtis](#)

3PB Barristers

An unusual set of circumstances arose in *Joseph v Deloitte NSE LLP* [2020] EWCA Civ. The Claimant was an equity partner at Deloitte; he was issued with a Notice of Retirement (essentially a dismissal). He exercised his right to ask the board to reconsider and a board meeting was duly convened.

If the Claimant remained aggrieved, then his next step was to appeal to the full equity partnership. He was required to give notice of this within 7 days of the board meeting. He was promised an outcome from the board within 7 days of their meeting.

Unfortunately, the Board did not let the Claimant know their outcome until day 8. Could he still appeal?

The High Court and Court of Appeal said no. The contract between the parties was clear: it allowed 7 days for the appeal from the date on which the board meeting took place. It could not be interpreted in a way which allowed a longer period (such as 7 days from notification of the decision, or an extension beyond 7 days when the Board Decision is not immediately communicated on the day of the meeting).

The Court of Appeal had a lot of sympathy for the Claimant, agreeing that it would be odd for him to commence a further appeal before he knew what the decision of the Board was. However, they emphasised the role of the court: *“In those circumstances it is tempting to try and fashion a remedy for Mr Joseph... Tempting but wrong. The role of the Court, whether in interpreting the terms the parties have expressly agreed, or considering what they have impliedly agreed, is not to make a better contract for the parties but to ascertain what their contract is”*

The lesson here is that in cases involving contractual rights of appeal it is essential to get the appeal in within the time specified in the contract, even if the employer has delayed another part of the process.

The court also reminded us of a lovely quote to use when trying to maintain strict contractual interpretation: *“The court is not here to re-write the contract and select from an à la carte menu of possibilities the one which the court thinks might have been more even-handed for the parties to have agreed”*

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the [3PB clerking team](#).

1 December 2020



Matthew Curtis

Barrister

3PB Barristers

0330 332 2633

Matthew.curtis@3pb.co.uk

3pb.co.uk