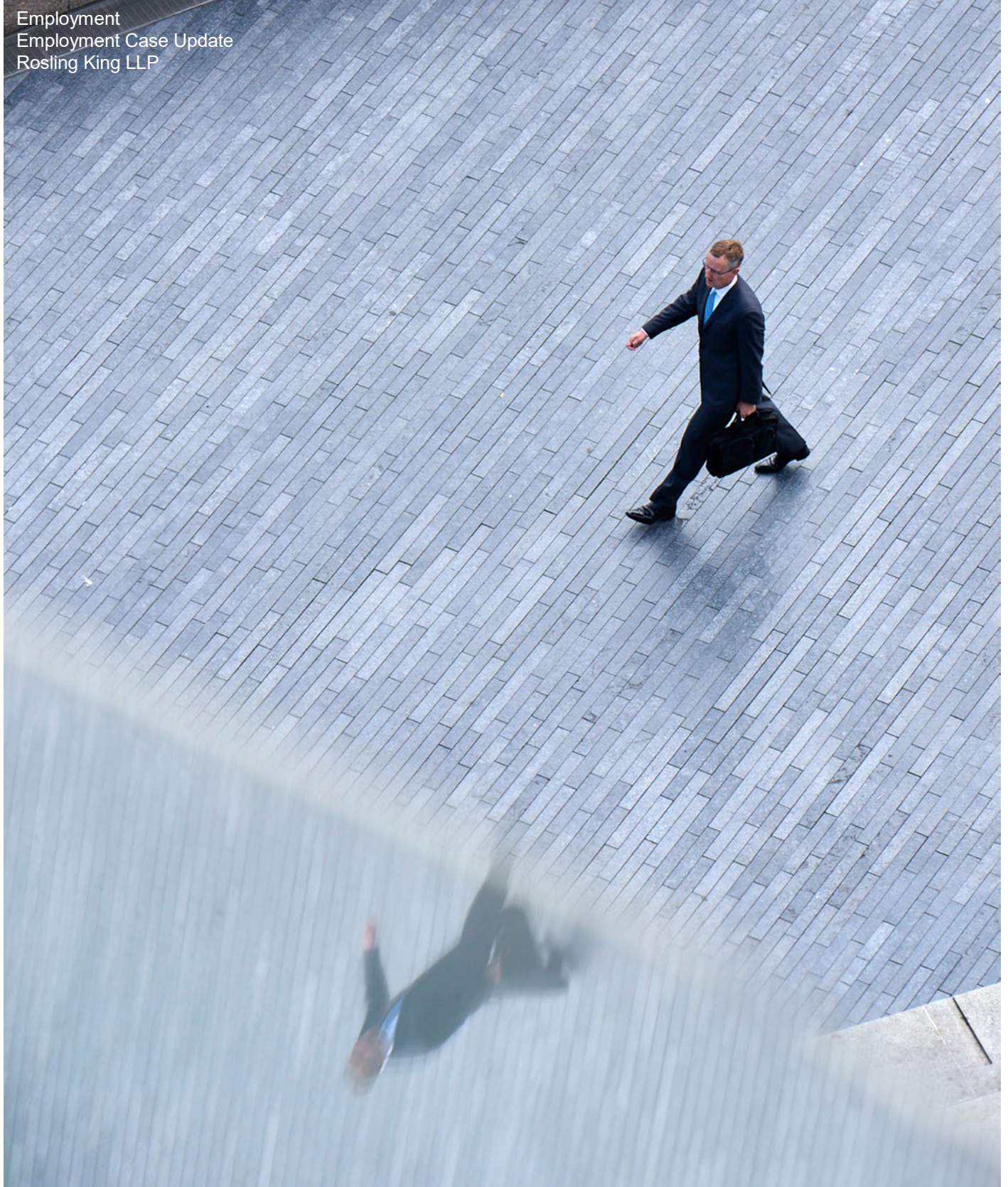


Employment
Employment Case Update
Rosling King LLP



The Facts

This recent case of the Court of Appeal decided whether individuals and directors can be personally liable to an employee under the whistleblowing protection afforded by the Employment Rights Act for detriment including dismissal.

The facts were that Alexander Osipov was dismissed on the ground that he had made protected disclosures. The backdrop of the case involved the oil industry in Nigeria and the disclosures concerned the contractual obligations of the Respondent's company and the Claimant's employer to ensure that there was an open and transparent tender process for the provision of FTG services. As stated in an email:

"Contractually we

- 1. Must approve the work programme with the management committee prior to any work done;*
- 2. Conduct a tender since the amount is above the limit;*
- 3. Finish the transfer of the licences to IPL Niger and get all the tax exemption docs. Otherwise we could be liable for TVA as well.*

Not doing this according to the contract would be a VERY bad move and would expose the Company to completely unnecessary risks..."

When the Claimant's involvement with the Respondent's company commenced he made it clear that he wished his arrival to usher in a new era of corporate governance and that rules had to be followed, especially operations in Nigeria, where he considered bribery to be an issue. He continued to resist the bypassing of a tender process and as a result he was dismissed as an obstacle. This was on the recommendation of two directors, Mr Timis and Mr Sage. A tribunal held that he had been unfairly dismissed contrary to s103A of the *Employment Rights Act*. But the employer became insolvent. Could Osipov go against the two directors personally?

The tribunal held that, by their conduct in relation to his dismissal, the directors had subjected him to a detriment contrary to section 47B(1A) of the ERA. That section prohibits whistleblower detriment by workers working for the same employer, as well as by the employer itself. But section 47B provides that there is no claim for detriment where it amounts to dismissal itself under Part X (Unfair Dismissal) of the ERA. However, the Court of Appeal decided this does not relieve a fellow worker or agent of liability for a detriment **resulting** in a dismissal.

As a result, the directors were jointly and severally liable, along with the employer, to compensate him for the losses suffered as a result of his unfair dismissal. Losses which exceeded £200,000 – just as well the directors were insured.



Commentary

Mr Osipov was CEO, Mr Timis and Mr Sage were directors but also Mr Timis was the largest individual shareholder and Mr Sage was its Chairman. It was clear from their email correspondence that they were the decision makers when it came to Mr Osipov's dismissal. The Court of Appeal seemed to be at pains to highlight how unusual this scenario was; that the employer company would be insolvent and that its directors had sufficient director's insurance and involvement to make it worth Mr Osipov's while to chase them for his losses. Nevertheless, it should make the management board and shareholders of any company consider carefully what action is being taken and how they conduct themselves.

For further information, please contact Jacqueline Kendal or the Partner with whom you usually deal.