

# Tesco Stores Ltd (Respondent) v Union of Shop, Distributive and Allied Workers and others (Appellants)

Case ID: 2022/0133

## Case summary

### Issues

Was the Court of Appeal wrong to find that Tesco was entitled to terminate certain employment contracts which included an entitlement to "Retained Pay", described as a "permanent" benefit, and offer re-engagement on terms without Retained Pay (the so-called "fire and re-hire" mechanism)?

### Facts

In 2007, Tesco Stores Limited ("Tesco") planned to close some existing distribution centres and open new ones. To retain staff, it offered a significant enhancement to the pay of staff willing to relocate from closing centres to new centres. This enhanced pay is referred to as "Retained Pay". The terms of Retained Pay were confirmed in a collective agreement made between Tesco and its recognised union ("USDAW"), which was then incorporated into individual employment contracts. Retained Pay was contractually described as "permanent", subject to alteration in specific circumstances.

In January 2021, Tesco wished to bring Retained Pay to an end. It gave notice to the relevant staff that it intended to seek their agreement to remove Retained Pay from their contracts in exchange for a lump sum payment. If an employee did not agree to this change, their employment contract would be terminated, and they would be offered re-engagement on the same terms but with the Retained Pay term removed ("fire and rehire").

The individual appellants are employees who have refused to give up their Retained Pay. They brought a claim in the High Court, seeking a declaration that their employment contracts contained an implied term that Tesco could not terminate the contracts for the purpose of removing Retained Pay, and an injunction preventing Tesco from terminating the contracts. The appellants were successful in the High Court, but Tesco's appeal was allowed in the Court of Appeal. The appellants now appeal to the Supreme Court.

### Judgment appealed

[\[2022\] EWCA Civ 978](#)

### Parties

#### Appellant(s)

- (1) Union of Shop  
Distributive and Allied Workers
- (2) Christopher Webb
- (3) Jagpreet Singh
- (4) Sandeep Kumar

#### Respondent(s)

Tesco Stores Ltd

### Appeal

**Justices**

Lord Reed, Lord Lloyd-Jones, Lord Leggatt, Lord Burrows, Lady Simler

**Hearing start date**

23 April 2024

**Hearing finish date**

24 April 2024

**Watch hearing**

23 April 2024 [Morning session](#) [Afternoon session](#)

24 April 2024 [Morning session](#)