

The importance of a fair procedure

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Should a Tribunal strike out an unfair dismissal claim where the Claimant has no prospect of recovering any compensation but where the dismissal may be procedurally unfair? The Employment Appeal Tribunal (EAT) has held that it should not, in the case of Evans v The London Borough of Brent.

Dr Evans was a deputy head teacher of a school and was dismissed for gross misconduct relating to his receipt of bonuses which were impermissible under teachers' standard terms and conditions. Prior to his dismissal, he had asked for the disciplinary hearing to be postponed so that his choice of companion (his sister) could attend and to give him more time to review documents and prepare. This request was refused and the disciplinary hearing went ahead in his absence. He was dismissed and claimed that his dismissal was unfair.

The Tribunal proceedings were initially stayed pending criminal proceedings. Subsequent High Court proceedings to seek to recover the bonuses paid to Dr Evans (and others) were then initiated and the Tribunal proceedings were again stayed pending the outcome. The High Court was satisfied that Dr Evans had received £250,000 in overpayments (albeit that over £200,000 of these overpayments were time barred and could not be recovered).

The Tribunal, bound by the findings of the High Court, was satisfied that there could be no doubt that the employer had a reasonable belief in misconduct, and that there were reasonable grounds for that belief. The Tribunal was also satisfied that there were no grounds for suggesting that dismissal was outside the range of reasonable responses open to the employer. It could not, however, accept that there was no possibility of the dismissal being unfair due to potential procedural concerns relating to the disciplinary hearing.

The Tribunal was satisfied that the Claimant would have been dismissed in any event, and further than he would recover no remedy from the Tribunal proceedings, bearing in mind that there was no possibility of the employer recovering over £200,000 of overpayments made to him. A Tribunal award would not be just and equitable in those circumstances; further, it was unlikely that any reduction for the Claimant's contribution to his dismissal would be less than 100%.

The Tribunal decided to strike out the Claimant's unfair dismissal claim, finding that the Claimant had no prospects of any recovery as a result of his claim and that the interests of justice (including the judicial resources and the cost to the public funds of Brent) did not warrant it continuing. The EAT disagreed with this approach.

The EAT held that it could not be said that there was no value to the Claimant in a finding of unfair dismissal, even one simply decided on procedural grounds. As the Tribunal had been unable to conclude that the claim of procedural unfair dismissal had no prospects, this did not provide grounds to strike out the claim. As to the Tribunal's wider discretion and its concerns about the use of judicial resources and costs, the EAT did not believe these concerns to be justified – the only element of the unfair dismissal claim which would continue related to the procedural unfairness point (and not the substantive reasons for dismissal which remained struck out) and this issue would not incur a significant amount of judicial resources or costs.

The decision to dismiss the Claimant was taken back in 2009. Over 10 years later, the matter will once again return to the Tribunal to consider the issue of procedural fairness, despite the Tribunal being satisfied that the employer had good grounds to dismiss the Claimant, there being no possibility of the Claimant clearing his name, and there being no real prospect of him recovering any compensation as a result – such is the importance of procedural fairness.

Whilst the vast majority of the delays in this case were attributable to the criminal and then civil proceedings, Tribunal proceedings and related EAT proceedings will no doubt have already incurred significant time and costs for all involved. It may not have been possible to avoid these (given that the Claimant may have decided to bring a claim in any circumstances), and it may of course be the case that the dismissal will be found to be procedurally fair in any event, but an irrefutably fair procedure would have given the employer stronger strike out arguments (as well as potential grounds for costs).

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