

## Is it reasonable to dismiss an employee without any prior procedure being followed as a result of a breakdown in relations?

The Employment Appeal Tribunal (EAT) has upheld the Employment Tribunal's (ET) finding that a dismissal may be fair despite no prior procedure being followed.

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The Employment Appeal Tribunal (EAT) has upheld the Employment Tribunal's (ET) finding that a dismissal may be fair despite no prior procedure being followed. In the case in question, *Gallacher v Abellio Scotrail Ltd*, the EAT accepted this rare decision on the basis that following a procedure may have made matters worse.

The Respondent was facing tough trading conditions at the time and required the Claimant, Ms Gallacher, and her manager to work together in harmony. However, the Claimant and her manager, both senior members of staff, experienced a breakdown in their working relationship. This was caused by salary negotiations, issues around on-call working and staffing. This ultimately resulted in the Claimant being dismissed during her annual performance review due to a lack of trust.

The Claimant brought a claim for unfair dismissal and disability discrimination (symptoms in connection with menopause and depression), however the ET concluded the reason for her dismissal was the irretrievable breakdown in her working relationship with her manager. The ET determined that to have followed any process may have been futile, and so the decision to dismiss without any prior procedure being followed was fair. After appealing to the EAT, on the grounds that she was not given prior notice that dismissal was being considered or the opportunity to appeal the decision, the Claimant's appeal was dismissed. The decision to dismiss fell within the range of reasonable responses open to the employer under the Employment Rights Act 1996.

In the majority of tribunal cases, where no procedure is followed before dismissal, this would place the dismissal outside the band of reasonable responses and therefore be unfair. However, this case shows that there can be exceptions to the general rule.

It should be emphasised that this is a rare case and if faced with similar circumstances, employers should be satisfied they have taken legal advice before dismissing an employee on the basis of an irretrievable breakdown. The employer should at the very least meet with the employee to talk to them about the situation, before any dismissal takes place.

## Contact

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