

## Failure to consider furlough made dismissal unfair

In this case the employer was found to have unfairly dismissed the employee on the basis that it did not consider whether she should be furloughed in order to avoid redundancy.

10 August 2021

In *Mrs B Mhindurwa v Lovingangels Care Limited*, the employer was found to have unfairly dismissed the employee on the basis that it did not consider whether she should be furloughed in order to avoid redundancy.

The employer, a home care provider, did not have any work for the employee, a care assistant, at the relevant time. The employee had previously carried out live-in care work and the employer could only offer domiciliary care work, which the employee could not accept. The employee was dismissed because of redundancy in July 2020.

However, in May 2020, the employee had asked to be furloughed. The employer had refused because there was no work for her.

In his judgment, EJ Gumbiti-Zimuto expressly refers to the purpose of the furlough scheme, which “*was to avoid lay off of employees because of the effect of the Covid-19 pandemic by providing significant government support to employers.*” He considered that in July 2020, a reasonable employer would have considered whether the employee should be furloughed to avoid redundancy, and that this is the type of situation that the furlough scheme envisaged. This is despite the fact that in July 2020, employers could only furlough those who had previously been furloughed for a minimum of three weeks before 30 June.

The employer had failed to consider whether the employee should be furloughed for a period of time to see what, if any, change there was in the availability of live-in care work. This, along with a failure to offer the employee a proper appeal, made the dismissal unfair.

This is only a first instance decision and is therefore not binding; the Tribunal also did not find that employers are obliged to use the Coronavirus Job Retention Scheme (CJRS) prior to making redundancies. However, it does highlight the importance of considering all potential alternatives before proceeding with redundancy. Employers should therefore carefully consider whether or not it would be appropriate to use the CJRS before making decisions to dismiss employees due to a downturn in available work, taking into account any eligibility requirement, employer contribution levels and remaining scheme duration.

## Contact



**Mark Hickson**

Head of Business Development

[onlineteaminbox@brownejacobson.com](mailto:onlineteaminbox@brownejacobson.com)

+44 (0)370 270 6000

# Related expertise

Services

Employment