

The vanishing dismissal

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04 November 2022

Where an employee appeals against their dismissal under a contractual appeal procedure and their appeal is successful, reinstatement to their previous role is automatic and does not require approval or agreement from the employee. Of course, this doesn't stop the employee from then resigning if they do not wish to be reinstated, but the original dismissal is treated as if it has simply vanished. However, if, after submitting an appeal, the employee withdraws it before it is determined, then this brings the appeal process to an end, and the original decision stands.

Marangakis v Iceland Foods Limited

In Marangakis v Iceland Foods Limited, the EAT was asked to consider what amounts to a withdrawal of an appeal. Here, the employee (prior to the appeal outcome) confirmed to her former employer that she did not want to be reinstated; instead, she was looking for an apology and compensation. However, she did not expressly refer to withdrawing her appeal, and in fact unequivocally confirmed to the ET that she had not in fact withdrawn it. This was because she had been advised by **Acas** to see the appeal through.

The decision

The EAT agreed with the findings of the ET that the Claimant's comments that she did not want to be reinstated did not amount to a withdrawal of her appeal; accordingly (and despite her wishes), when her appeal was successful, she was automatically reinstated, and her original dismissal vanished.

What this means

There are many reasons why an employee may want to appeal even if they do not wish to work for their employer again; however, as this case demonstrates, there are risks with this approach. And if an employee does change their mind after appealing and wishes to withdraw, they should be explicit about the same.

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