

## Supreme Court extends whistle-blower protection

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The Supreme Court has now published its decision in respect of Royal Mail Group Limited v Jhuti.

The Employment Tribunal previously made findings of fact that:

- Ms Jhuti had made protected disclosures to her line manager;
- The line manager's response was to pretend (over the course of several months) that her performance was inadequate; and
- In due course, another officer appointed by the company decided that Ms Jhuti should be dismissed.

Importantly, the dismissing officer had no reason to doubt the truthfulness of the material indicating that Ms Jhuti's performance was inadequate and so, from her perspective, the genuine reason for dismissal was inadequate performance. The issue was therefore whether, in an unfair dismissal claim, the reason for dismissal could be other than that given to the employee by the decision-maker. The Employment Tribunal and Court of Appeal held that it couldn't; the Employment Appeal Tribunal (EAT) held that it could. The Supreme Court has now agreed with the EAT.

The Supreme Court decided that where a person in the "hierarchy of responsibility" above the employee (here, Ms Jhuti's line manager), determines that the employee should be dismissed for one reason (here, the making of protected disclosures) but hides that reason behind an invented reason (here, inadequate performance) which the decision-maker adopts, then it is the duty of the court to look through than invention. The reason for dismissal will therefore be the hidden reason, rather than the invented one.

The decision of the Supreme Court extends the scope of whistle-blower protection and is a wider approach than that taken in direct discrimination claims where it is the thought-processes and motivation of the decision-maker (or makers) that remain key. Employers will need to ensure that they have a complete picture of the situation prior to dismissal to avoid findings that decisions have been taken on the basis of incorrect information, particularly where, as was the case in Jhuti, the employee is too ill to fully participate in the dismissal process.

## Contact



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