Mistaken but genuine belief that an employee has resigned can be a fair reason for dismissal

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Impact Recruitment Services Ltd v Korpysa [2025] EAT 22

The facts

C was employed by Impact Recruitment Services ("Impact"), an agency, which supplied her services to Howden Joinery Limited ("Howdens"). C was placed with Howdens as a warehouse operative. Following the national lockdown in March 2020, the majority of agency staff were told that Howdens would be shutting down. C was 'laid off' by Howdens. This caused confusion in C's mind as to her employment status.

In a telephone call with Impact's on-site account manager, C asked for all her holiday pay to be paid and asked for a copy of her contract of employment. There was a dispute as to whether C also requested a copy of her P45. By a majority, the ET accepted C had not requested her P45. Impact, believing that C had resigned, issued C her P45. C brought claims of age discrimination and unfair dismissal in the ET.

The ET

The ET dismissed the age discrimination complaint but upheld the complaint of unfair dismissal by a majority (consisting of the lay members).

The majority held that requesting a copy of her contract of employment and an advance of holiday pay did not amount to a clear and unequivocal resignation. The majority concluded that the reason for dismissal was a mistaken belief that C had resigned. The ET subsequently concluded that this was not a potentially fair reason for dismissal and that the dismissal was both procedurally and substantively unfair as a result.

The EAT

HHJ Auerbach concluded that the majority was, in light of its unchallenged factual findings, correct to proceed on the basis that the factual reason for dismissal was a genuine but mistaken belief that C had resigned.

However, the EAT held that a mistaken belief that an employee had resigned *is* potentially capable of being treated as a substantial reason of a kind falling within section 98(1)(b) Employment Rights Act 1996.

The EAT observed that the fact that a factual reason falls in a *category* of reasons that are capable of amounting to such a substantial reason does not necessarily mean that it will do so in every case. However, the authorities do tend to suggest that the threshold for what counts as a substantial reason for these purposes is relatively low. Where the kind of reason relied upon, and found, is a genuinely mistaken belief that the employee has resigned, that ought to be regarded as qualifying, unless the ET considers that the belief was truly capricious, or lacking any possible rational basis, or something of that sort.

The EAT concluded that the ET had erred in assuming that Impact's mistaken, but genuinely held, belief that C had resigned was not potentially capable of being treated as SOSR. On account of that wrong assumption, the ET had failed to go on and consider whether C's dismissal *was* for a substantial reason of that kind. The EAT confirmed that in a case of this nature, the ET must then go and consider whether the dismissal was fair or unfair, applying the section 98(4) test.

The fact that an employer was acting on a genuine, albeit mistaken, belief would be relevant to the ET's consideration of whether the employer acted reasonably in taking the steps it did when it did, that resulted in dismissal. But, in a given case, arguments might be raised, for example, as to whether the employer had failed to take some step that any employer acting reasonably would have taken, to investigate and establish whether the employee had indeed resigned, before acting on a report that they had done so. It might, in a given case, also be relevant to consider whether the belief that the employee had resigned was reasonably open to the manager concerned, on the information available to them, again applying a band of "reasonable responses" approach. The EAT made clear that there is no rule that certain minimum procedural steps must be taken in every case in order for section 98(4) to be satisfied.

The EAT concluded that the matter would be remitted to a different judge or panel to decide afresh whether, in light of the facts found, Impact had shown that the reason for dismissal was a substantial reason within section 98(1)(b) and, if so, whether the dismissal was, in light of the facts found, fair or unfair, applying the test in section 98(4).

Comment

This is an interesting decision on a point of unfair dismissal law that is not litigated very often. The EAT has reinforced the relatively low threshold for what counts as a substantial reason for SOSR dismissals. An employer's genuinely held but mistaken belief that an employee has resigned may be sufficient to establish a potentially fair reason for dismissal. However, the dismissal may nonetheless be unfair if the employer did not act reasonably in treating the employment as terminated for that reason.

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