

The Facts: Unfair Dismissal

What is an unfair dismissal?

Employees are protected from most kinds of unfair dismissal after they have two years' continuous employment with the same employer. Unfair dismissal claims expose employers to the risk of costly tribunal disputes, losses of management time in preparing for and attending trial and potentially damaging publicity.

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What are fair reasons for dismissing an employee?

- Capability - the employee is not capable of performing the role due to lack of skills or ill health
- Conduct - serious/repeated instances of misconduct by the employee
- Redundancy - a reduction in the need for employees to carry out work
- Contravention of statute - the employee is unable to lawfully carry out the role
- Any other substantial reason which does not fall under any of the above but is still a justifiable reason e.g. serious personality clashes.

Even if an employer establishes a potentially fair reason for the dismissal, if they have not adopted a correct procedure the dismissal may be unfair. What is the correct procedure varies according to the reason for the dismissal.

What remedies are there?

If an employee is successful the Tribunal can award capped compensation for the employee's losses up to £76,574 or 52 weeks gross salary, whichever is lower. This is in addition to a basic award which is calculated based on age, length of service and a week's gross pay capped at £464 (the basic award is currently capped at £13,920). In addition, the tribunal can order reinstatement or re-engagement. Claimant Tribunal fees of up to £1,200 will also be recoverable.

Recent cases

- A waste disposal company dismissed an employee due to redundancy. The employee alleged the employer failed to follow procedures and alleged that due to a previous TUPE transfer, he had sufficient continuous service to bring a claim for unfair dismissal. We argued that they did not have requisite service to bring an unfair dismissal claim and the claim settled pre trial.
- An insurance company had an employee with high levels of absence which they suspected were related to alcohol abuse. We obtained an occupational health report which confirmed that there were no underlying disabilities (alcoholism is excluded). We advised the employer regarding a disciplinary process which culminated in the employee's dismissal on 'some other substantial reason' grounds. No tribunal proceedings were brought by the employee.

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