

Can employers take into account expired warnings in deciding to dismiss?

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In some cases, an employer can take into account an employee's history of expired written warnings in deciding to dismiss them following a further instance of misconduct.

Mr Stratford worked for Auto Trail VR Ltd from November 2001. He had 17 items on his disciplinary record, the most recent of which was a 3-month warning received in January 2014. All of the written warnings he had received had expired.

In October 2014, Mr Stratford had his mobile phone in his hand on the shop floor, which was strictly prohibited according to Auto Trail's handbook. Following a disciplinary hearing, Auto Trail decided to dismiss Mr Stratford with 12 weeks' pay in lieu of notice. It reasoned that, whilst the mobile phone offence was not of itself an act of gross misconduct (particularly given that there were some extenuating circumstances), it was the eighteenth time his behaviour had attracted formal action. If it gave Mr Stratford another chance, there was nothing to suggest that there would not be a similar situation in future.

Mr Stratford brought a claim in the Employment Tribunal alleging unfair dismissal.

The Employment Appeal Tribunal held that the dismissal was fair. An employer (and an Employment Tribunal in determining the claim) need not always totally disregard expired warnings. It was open to them to take into account all of the relevant circumstances, given the broad wording of the legislation on unfair dismissal. An employee's disciplinary record is among those circumstances – an employer need not disregard it simply because the respective written warnings have expired.

However, the facts of this case were quite extreme and circumstances where expired warnings can be relied on will continue to be the exception, not the rule. In general, expired warnings will not be relevant unless the act under consideration is already sufficient to justify dismissal and the employer is taking the older offence into account only in deciding whether to exercise leniency.

Stratford v Auto Trail VR Ltd UKEAT/0116/16

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