

# **Contractual summary termination provisions are not the Holy Grail**

written by BDBF

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# **Contractual summary termination provisions are not the Holy Grail**

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The Employment Appeal Tribunal found that employers cannot rely on contractual summary termination clauses to dismiss an employee without notice where in reality there is no gross misconduct or negligence.

Mr Knight worked as a gardener. His employment contract listed circumstances whereby his employment could be terminated without notice, including 'breach of the employer's or customer's security rules'. His employer found a bag of bolts in Mr Knight's car from a customer site and suspended him. Mr Knight's explanation was that he had forgotten to hand it in and intended to do so when he returned to work. His employer dismissed Mr Knight without notice for theft and for removing goods from the site, contrary to the customer's security rules. Mr Knight brought a breach of contract claim for his notice monies.

The EAT found that although Mr Knight failed to comply with the security protocol, it was a minor or inadvertent breach at most, not a fundamental breach of contract, and therefore his employer could not dismiss Mr Knight in line with its contractual termination provisions.

Contractual termination provisions in contracts must be viewed in the context that employers cannot dismiss employees without notice unless there is gross misconduct or negligence amounting to a repudiatory breach. If there is no real deliberate or serious wrongdoing, employers cannot lawfully dismiss an employee without notice, whatever it says in the contract.

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