

A dismissal for taking time off for a dependant was not automatically unfair

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The Employment Appeal Tribunal has held that the dismissal of a man who took time off for his dependant, in this case his

pregnant partner, was not automatically unfair because he failed to inform his employer of the reason for his absence as soon as reasonably practicable.

Mr Ellis worked at Ratcliff Palfinger Ltd. He was contractually obliged to inform his line manager by no later than 30 minutes after he should have started work if he would be unable to attend and to keep in regular contact as appropriate, given the nature of the illness or condition that prevented him from working. On 25 November 2011, Mr Ellis was given a final written warning as a result of attendance issues, which stated that any further failure to work his required hours could result in his dismissal.

Mr Ellis had a pregnant partner and there had been some concerns about her health. As a result, on 6 February 2012, Mr Ellis took her to hospital several times but he did not explain the situation to Ratcliff (although his father called them later in the day to account for Mr Ellis' absence). On 7 February 2012, Mr Ellis received a text from Ratcliff asking him to contact the office urgently. Mr Ellis contacted Ratcliff and was criticised for not making contact or coming into work. He called Ratcliff later that day to explain that he would not be in work the following day. Mr Ellis did not attend work that week during which his partner gave birth and the Tribunal rejected his evidence that he had mentioned this to Ratcliff on 7 February 2012.

On 15 February 2012, Ratcliff asked Mr Ellis to attend a disciplinary hearing. Mr Ellis did not attend. He said that the battery on his mobile phone had run out and he had called his father to ask him to call Ratcliff instead (as he could not remember their phone number). Bearing in mind the written warning on Mr Ellis' file, Ratcliff dismissed Mr Ellis and gave him pay in lieu of notice on 16 February 2012, arguing that he had failed to make reasonable efforts to inform Ratcliff of his absence for the week beginning 6 February 2012.

The Employment Rights Act allows employees to take a reasonable amount of unpaid time off work to deal with certain situations affecting their dependants, including a dependant giving birth. Accordingly, any dismissal of an employee claiming this right will be automatically unfair. After unsuccessfully appealing Ratcliff's decision, Mr Ellis then brought a claim that he had been automatically unfairly dismissed for taking urgent time off to care for his wife.

The EAT dismissed Mr Ellis' claim and held that his dismissal was not automatically unfair because he had not told Ratcliff of his absence as soon as was reasonably practicable. The EAT held that when considering what was reasonably practicable, the courts should have regard to the particular facts, including the employee's mental state. It held that what is reasonably practicable is not limited to what is "reasonably capable physically of being done". However, it also found that the business needs of Ratcliff were not a relevant factor for it to consider. This case makes it clear that the onus will be on employees to take appropriate steps to inform their employers of time off taken for dependants.

As of 1 October 2014, qualifying employees and agency workers have also had the right to take unpaid time off work to attend two ante-natal appointments with their pregnant partner (capped at 6.5 hours per appointment).

Ellis v Ratcliff Palfinger Ltd UKEAT/0438/13

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