

EAT considers whether prison officers had reasonable belief of danger arising from bad weather

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The Employment Appeal Tribunal considered the situation in which an employee is entitled to refuse to travel to work in bad weather. It found workers could refuse where travelling would cause serious and imminent danger.

This case concerned a group of prison officers stationed at HMP Dartmoor. The prison had in place an adverse weather policy; this provided for staff to gather at a designated pick-up point to await transport to prison premises. The policy provided that if staff waited for more than 3 hours after the beginning of the shift, they were entitled to return home on full pay.

On 18 January 2013, the Claimants were due to begin work at 8am. It had snowed heavily, so the Claimants and around 40 other staff members gathered at the pick-up point to await transport to the prison. The prison sent 4x4 vehicles to the pick-up point; most staff took the transport, but 13 members of staff, including the Claimants, refused to get in. Mr May, one of the Claimants, claimed that he had spoken to the Devon Highways Agency who had informed him that the road was closed and driving on it was prohibited. Another Claimant, Miss Bolton, claimed she had been told by a prison governor that the road was “not good at all”. After waiting until 11am, the staff returned home.

The prison refused to pay the Claimants for that day’s work. The prison submitted that one of its governors had spoken to the local police and had been informed that the prison was permitted to use the closed roads with caution. The prison’s evidence was that at least some of the Claimants were informed of the police sanction.

The Claimants claimed unlawful deductions to wages and

unlawful detriments connected to their right to refuse to work where they had a reasonable belief of serious and imminent danger.

The EAT held that the fact that the road was closed due to snow was properly regarded as “circumstances of danger”. As to the Claimants’ belief, the EAT decided that the proper approach was not to consider the Claimants collectively, but rather to look at the individual beliefs of each of them. The fact that other staff had completed the journey without incident did not necessarily mean that the Claimants lacked the requisite belief. On the other hand, the EAT did not accept the Claimants’ argument that they were in any event entitled to pay for staying at the pick-up point for the 3 hours stipulated in the adverse weather policy. It was possible for staff unreasonably to refuse prison transport and not work; it would plainly be inappropriate for a full day’s pay to be payable only because they stayed at the pick-up point for three hours.

This case has been remitted to the employment tribunal, so there is not as yet a final decision on whether the Claimants did hold the requisite belief. In the meantime, this case serves to show the merit in employers creating a clear adverse weather policy and highlights the importance of keeping staff fully updated when weather problems interfere with usual working patterns.

Edwards and others v The Secretary of State for Justice
UKEAT/0123/14

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