EAT rules that persistent lateness of even a few minutes is misconduct that may justify dismissal

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The EAT has upheld a Tribunal’s decision that it was fair to dismiss an employee for being persistently late to work, even though sometimes this was by just two or three minutes. Employees must be ready to start work from the time that they are paid, and employers are not required to show they have suffered any problems as a result of an employee’s lateness.

What happened in this case?

The Claimant began working as a cleaner in the House of Commons in June 2015. Cleaning staff started work at 6am in order to have finished cleaning before MPs arrived for the day. Throughout her employment, the Claimant was regularly late for work.

In December 2017, the Claimant was issued with a first written warning for lateness, because she had arrived late on 17 out of 20 days. The Claimant’s timekeeping did not improve, and further disciplinary proceedings were commenced. A final written warning was issued in April 2018, which notified her that if her timekeeping did not improve, she could be dismissed. There was still no improvement. The Claimant was late on a further 43 occasions, arriving between two and 33 minutes late each time. The Claimant was dismissed in May 2019.

The Claimant claimed that she had been unfairly dismissed.

What was decided?

The Claimant admitted that she was sometimes late to work, but that dismissal was a disproportionate sanction. The Tribunal

held that all instances of lateness counted as misconduct, even where it was a matter of just a few minutes. It was not incumbent on an employer to prove to an employee that there had been actual damage arising from their conduct. It was also accepted that employees should not just arrive at the workplace on time but be ready to start work from the time that they are being paid.

The Claimant also argued that she had been treated inconsistently with other colleagues who had arrived late but had not been dismissed. However, the Tribunal accepted that these cases were different because these colleagues had improved their behaviour once they had received a warning, whereas the Claimant did not.

Unusually, the Tribunal did not have sight of the employer's Disciplinary Policy in the proceedings, but it was prepared to accept that poor timekeeping is generally regarded by employers as misconduct, and it dismissed the claim.

The Claimant appealed to the EAT, arguing (amongst other things) that the Tribunal's conclusion that poor timekeeping is generally regarded as misconduct was incorrect. The EAT rejected the appeal. It reiterated that it is incumbent on employees to be ready to begin work at their scheduled start time, and that the Tribunal was entitled to find that lateness is generally viewed as a conduct issue which may justify dismissal.

It also agreed that the employer did not have to demonstrate that the persistent lateness caused problems, but even if that was wrong, where an employee is in receipt of a final written warning for persistent lateness and had been warned of dismissal, he or she is clearly on notice of the potential consequences, meaning no further explanation is required from the employer.

What does this mean for employers?

Most disciplinary policies will state that lateness will be treated as misconduct and may trigger disciplinary proceedings. This decision reassures employers that even if their policy does not expressly state this, lateness is generally treated as a misconduct issue. The decision also underlines that there are not degrees of lateness which are acceptable and should be overlooked. Rather, employees are obliged to be ready for work at their start time and if they are not, the employer is entitled to take disciplinary action.

It is important to remember that a fair process should be followed in order to achieve a fair dismissal. In most cases this will involve issuing warnings before moving to dismiss. It will also involve taking a consistent approach and listening to the particular employee's explanation for his or her lateness and making allowances where appropriate (e.g. if the lateness is linked to a disability).

Tijani v The House of Commons Commission

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