

# Employee accused of sexual assault was unfairly dismissed because of investigating officer's mistake

written by BDBF

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## Employment Law News

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## **Employee accused of sexual assault was unfairly dismissed because of investigating officer's mistake**

**If an investigating officer fails to pass on relevant information to a dismissing officer, could this undermine the reasonableness of the dismissing officer's decision?**

### **What does the law say?**

In the recent case of Royal Mail Group v Jhuti (Jhuti), the Supreme Court ruled that an employer who had been manipulated into dismissing an employee for a false reason was liable for unfair dismissal based on the hidden reason. This was the case even though the employer's dismissing officer had dismissed in good faith for another reason. You can read our full report on that case [here](#). Although Jhuti was concerned with an automatically unfair whistleblowing dismissal, the Supreme Court's reasoning applies equally to everyday unfair dismissals.

In this case, the Employment Appeal Tribunal (EAT) applied the Jhuti principle in the context of an ordinary unfair dismissal, where an investigating officer failed to pass on relevant information to the dismissing officer.

### **What happened in this case?**

Mr Uddin was a 43-year old manager and S was a 26-year intern working for the London Borough of Ealing (LBE). One Friday night, Mr Uddin, S and some colleagues went for drinks after work. Mr Uddin and S were drinking heavily and had been affectionate with each other during the course of the evening. However, S later alleged that Mr Uddin had followed her into the disabled toilet towards the end of the evening, locked the door and sexually assaulted her. S also alleged that, when back at work, Mr Uddin had harassed and intimidated her.

LBE's management were alerted to the incident and a

disciplinary investigation was triggered. A Mr Jenkins was appointed to investigate the matter. On 12 January 2017, Mr Jenkins concluded there was a case to answer for gross misconduct, namely the sexual assault and the subsequent harassment. A Ms Fair was appointed to chair the disciplinary process.

Mr Jenkins had urged S to report the matter to the police, which she did on 19 January 2017. However, the police identified inconsistencies and discrepancies in S's account. She then withdrew her allegations and said she had felt pressured by LBE and Mr Jenkins to report the matter. On 24 February 2017, the police decided that an action against Mr Uddin was not in the public interest.

By the time the disciplinary hearing took place on 31 March 2017, Mr Jenkins knew that S had withdrawn her allegations to the police. However, he did not pass this information on to Ms Fair. Ms Fair decided to dismiss Mr Uddin for gross misconduct. Whilst she knew that the police had decided against action, she did not know that S had withdrawn her allegations.

Mr Uddin argued that his dismissal was unfair because Mr Jenkins had failed to tell Ms Fair that S had withdrawn her allegations before the dismissal decision was taken. He said that the withdrawal showed that S's evidence was unreliable. Indeed, Ms Fair later conceded that had she been told about the withdrawal she would have wanted to find out more.

However, the Employment Tribunal dismissed the claim. Leaving aside the withdrawal issue, they said there was still sufficient grounds for dismissal and knowing about the withdrawal would have made no difference. Mr Uddin appealed.

### **What was decided?**

The EAT said that Jhuti addressed situations where the knowledge or conduct of a person other than the actual

decision maker could be attributed to the employer when deciding the true reason for dismissal.

This case was slightly different. There was no suggestion that Mr Jenkins had deliberately manipulated Ms Fair or that there was a hidden, true reason for the dismissal. However, the Supreme Court had noted that its reasoning would also be relevant to an assessment of whether the employer had acted reasonably. Here, Ms Fair had taken the decision in good faith, but it was in ignorance of a key piece of information known by Mr Jenkins. This failure meant the dismissal had to be unfair.

However, this could yet turn out to be a pyrrhic victory for Mr Uddin. When it comes to deciding on remedy, it's possible that the Tribunal may decide that even if Ms Fair had known about the withdrawal, it would have made no difference and she would have still dismissed. If so, they could potentially award nil compensation.

### **What are the learning points?**

Employers need to ensure that their dismissal processes are unimpeachable and that both investigating officers and dismissing officers receive detailed training on the scope of their role. In particular, investigating officers need to ensure that the information they provide to dismissing officers is accurate and updated as required: they are not relieved of this obligation when the investigation is concluded and passed to the dismissing officer. It would be advisable for employers to outline this duty in disciplinary policies and other relevant internal guidance.

### [Uddin v London Borough of Ealing](#)

**If you would like to discuss any of the issues raised in this article, please contact [Amanda Steadman](#) ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual [BDBF](#) contact.**

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