

# Employee who smelled of alcohol was unfairly dismissed

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In the absence of evidence suggesting that an employee is unable to do his job, it was unreasonable for an employer to

dismiss an employee for coming to work whilst smelling of alcohol.

Mr McElroy was employed by Cambridgeshire Community Services NHS Trust. One day, Mr McElroy came to work smelling of alcohol and suggested that this was because he had drunk two beers the night before. Mr McElroy subsequently put forward several other explanations, which included aftershave, garlic and hospital alcohol gel. An investigation was held, and Mr McElroy was referred to Occupational Health for an assessment, which he refused to attend. He was subsequently dismissed for misconduct.

The disciplinary policy only mentioned being drunk at work as constituting misconduct insofar as the employee was unfit for work as a result of drinking, which was not proven to be the case. The tribunal held that a reasonable employer would not have concluded, based on the fact that an employee smelled of alcohol, that he was unfit for work. Further, whilst the dismissal letter referred to the original misconduct as well as the failure to attend the OH appointment, the latter was not mentioned to Mr McElroy during the disciplinary process, which the tribunal found to be unreasonable.

The importance of having comprehensive policies which are in line with the employer's position on substance use in the workplace is highlighted in this case. Equally important for employers is observing the disciplinary process, and, in particular, addressing any issues that will be relied upon for dismissing the employee during the hearing.

*McElroy v Cambridgeshire Community Services NHS Trust*  
*ET/3400622/14*

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