

# Error in employer's letter to disabled employee not relevant when considering objective justification

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In *Crime Reduction Initiatives (CRI) v Lawrence* UKEAT/0319/13, the EAT held that a poorly drafted letter inviting the claimant to a disciplinary meeting when it should have referred to a capability meeting which had the effect of deterring her from attending was not relevant to the question of whether her employer had been objectively justified in deciding to dismiss her.

Ms Lawrence was suffering from post-natal depression and occupational health at CRI assessed her as having a long term disability and unable to return to work. CRI then began a capability procedure. Unfortunately, the letter inviting Ms Lawrence to this hearing was phrased as though it were an invitation to a disciplinary procedure. Ms Lawrence declined to attend the meeting which proceeded in her absence and afterwards her employer dismissed her on the grounds of ill-health.

Following her dismissal, Ms Lawrence brought a claim for unfair dismissal and discrimination arising from disability. The tribunal upheld her unfair dismissal claim on the basis that the letter had discouraged her from attending her capability hearing. On a majority ruling, the tribunal also upheld her discrimination claim on the basis that the dismissal was not objectively justified because it was not a proportionate means of achieving a legitimate aim. It held that although it had a legitimate aim of managing its workforce and delivering a service, Ms Lawrence had not been consulted appropriately. However, the tribunal found that Ms Lawrence would have been fairly dismissed if she had attended the meeting so only made a basic award for her unfair dismissal and an injury to feelings award of £750.

On appeal, the EAT confirmed the decision in HM Prison Service

v Johnson [2007] IRLR 951 that procedural questions are irrelevant to dealing with objective justification. It held that the letter was procedural and did not relate to the decision to dismiss Ms Lawrence and, given that the tribunal had made a finding that the dismissal was inevitable and pursuant to a legitimate aim, it was not relevant to a ruling on objective justification.

However, employers should be wary of such letters as had the employee argued that the letter was a detriment rather than the decision to dismiss, the case could have been decided differently.

*Crime Reduction Initiatives (CRI) v Lawrence UKEAT/0319/13)*

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