

Failure to provide an impartial grievance procedure = a constructive dismissal claim?

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In *Blackburn v Aldi Stores Ltd*, the Employment Appeal Tribunal found that an employer's failure to provide an impartial grievance procedure could breach the implied term of 'trust and confidence' and form the basis of a constructive dismissal claim.

Mr Blackburn worked as a driver for Aldi and in 2009 he raised a grievance related to health and safety matters, lack of training and mistreatment by his manager. His grievance was investigated by Mr Heatherington and partially upheld. Mr Blackburn appealed this decision.

Aldi's written grievance policy stated that grievances were to be handled by section managers and appeals were to be escalated upwards to the next level of management. However, in this case, the same manager dealt with the grievance and also the appeal. Mr Blackburn resigned and claimed constructive dismissal arguing that Aldi breached the implied term of 'trust and confidence' by denying him an impartial appeal.

The Employment Appeal Tribunal remitted the case back to the Tribunal to determine whether: (1) Aldi had denied Mr Blackburn a suitable appeal against the grievance outcome; and (2) whether this was a breach of the implied term of trust and confidence.

Whilst we wait for a decision, employers should bear in mind the EAT's commentary that the right to an impartial appeal in a grievance decision is an important part of the ACAS Code and could amount to a breach of the implied term of trust and confidence. Failure to follow the ACAS code and your own grievance procedures could result in an employee claiming constructive dismissal. This is especially relevant for large organisations who have the resources to ensure that a

grievance and appeal are dealt with by two different people.

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