

Giving an employee a false reason for dismissal is a breach of the implied term of mutual trust and confidence

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An employer who gives an employee a false reason dismissal may be in breach of the implied term of mutual trust and confidence.

Mr Rawlinson was employed by Brightside Group from December

2014 as its Group Legal Counsel. Shortly after he commenced employment, a new CEO, Mr Wallin, took up office. Mr Wallin soon raised concerns about Mr Rawlinson's performance, though these were not addressed directly with Mr Rawlinson. By March 2015, Mr Wallin had decided that Mr Rawlinson could not continue; the intention was for Mr Rawlinson to be dismissed on notice in due course and to train his successor during his notice period.

Rather than telling Mr Rawlinson about the concerns over his performance, Brightside led him to believe that that his job was under pressure due to a restructure of the company's legal services. It told him that they would be shifting towards the use of external legal providers, and that, as a result, his dismissal was effective and that he was expected to work his three months' notice period.

Mr Rawlinson considered that a TUPE transfer was taking place and asked for confirmation of the name of the firm to which legal services were being outsourced. Brightside refused to inform him; Mr Rawlinson considered this to be breach of contract. He told Brightside he was resigning in response to that breach of contract, thereby freeing himself from his notice period.

Mr Rawlinson brought various claims in the Employment Tribunal including constructive wrongful dismissal (which was worth the balance of his notice pay).

The Employment Appeal Tribunal upheld Mr Rawlinson's claim for constructive wrongful dismissal. It held that the implied term of mutual trust and confidence included a duty not deliberately to mislead. Whilst the employer did not necessarily have to volunteer information, when it chose to do so it had to do it in good faith. In any event, the decision to mislead Mr Rawlinson about the reason for his dismissal was not taken solely to spare his feelings – Brightside was keen for him to work his notice period in order to train his

successor. Even though Mr Rawlinson did not rely on the lie as his reason to resign at the time, he could rely on it as justification for having done so once it came to light.

Rawlinson v Brightside Group Ltd UKEAT/0142/17

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