

Holding an employee to a “heat of the moment” resignation may amount to a dismissal

In *Omar v Epping Forest District Citizens Advice* the EAT has set out detailed guidance on how resignations should be assessed and whether they bind the employee. Here, the EAT said the Employment Tribunal had been wrong to conclude that an employee who had resigned in anger for the third time in three weeks really intended to resign.

What happened in this case?

Mr Omar worked as an Advice Session Supervisor for the Epping Forest District Citizen’s Advice Centre. On 3 February 2020, the CEO of the Advice Centre wrote to Mr Omar regarding his timekeeping. Mr Omar was unhappy with the letter and verbally resigned to his line manager, Ms Skinner. Ms Skinner told him to calm down and that she would not accept his resignation. On 5 February 2020, Mr Omar became angry about something else and resigned for a second time. Again, Ms Skinner advised him to calm down and said she would not accept this resignation.

On 19 February 2020, Ms Skinner questioned holiday dates that Mr Omar believed he had booked, but which were not showing up on the staff leave database. Mr Omar responded by shouting that Ms Skinner knew full well that he had booked leave. He then said he was “*done with the organisation*” and that Ms

Skinner should *"tell who you need to but I'm off because I've had enough"*. Ms Skinner reported that he also said: *"these are fucking bullshit [sic]...that's it, from today a month's notice"*.

Later that day, Ms Anyanwu, the CEO of the Advice Centre, met with Mr Omar and Ms Skinner to discuss what had happened. Mr Omar said he had "blown up" because he was still upset about the timekeeping letter and because he was under pressure outside work, helping to care for his mother who had dementia. Mr Omar alleged that Ms Anyanwu had asked whether he and Ms Skinner could continue working together and that she had offered him an alternative role (implying that his resignation had not been accepted). The Advice Centre's account of that meeting was that Ms Anyanwu had asked the pair whether they could continue to work together over Mr Omar's notice period only. Further, it said no alternative role was offered. It was noted that Mr Omar was emotional in the meeting, but he did not attempt to withdraw his resignation.

On 21 February 2020, Mr Omar met with Ms Anyanwu again. She told him that Ms Skinner had confirmed that she could no longer work with him. Mr Omar said he was then told that, therefore, his resignation would stand. The Advice Centre's case was that Mr Omar said in response that he could not work with Ms Skinner either and that, therefore, his resignation would stand. In any event, at this meeting Mr Omar agreed to put his resignation in writing. However, Mr Omar did not do that. Instead, on 23 February 2020 he sent an email to Ms Anyanwu stating that he wished to retract his resignation as it was given in the "heat of the moment". He suggested that they allocate him to work from a different office. The Advice Centre refused to accept the retraction of the resignation and treated his employment as having terminated on 19 March 2020, one month from the resignation date.

Mr Omar claimed that he had been unfairly dismissed. The Employment Tribunal decision was very brief and concluded that Mr Omar *had* resigned, and that the Advice Centre had not offered him an alternative role. As he had resigned, there was no dismissal and the claim failed. Mr Omar appealed to the EAT.

What was decided?

The EAT overturned the Tribunal's decision, finding that it was "*substantially flawed*". It had failed to make the necessary findings of fact to support its decision. Further, it had not applied the correct legal principles to the case, although this was "*understandable*" because no previous cases had drawn together all the principles governing the interpretation of resignation statements.

That being the case, the EAT reviewed all the legal authorities and set out a comprehensive statement of the principles governing notices of resignations (and, importantly, which apply in the same way to notices of dismissal given by an employer):

1. There are no "special cases" where the principles do not apply. The same rules apply in all cases where notice of resignation given in the employment context.
2. A notice of resignation cannot be unilaterally retracted by the employee.
3. Words of resignation (or words which potentially

constitute words of resignation) must be construed objectively in light of all the circumstances and should be judged from the position of a “reasonable bystander” in the position of the employer.

4. The uncommunicated subjective intention of the employee is *not* relevant (i.e. it does not matter what was going through their mind when they said the words) – what matters is what was said. However, if they later tell the employer what their intention was, this may be a relevant factor to be taken into account when assessing whether they had really meant to resign.
5. What the employer understood by the resignation words *is* relevant (as it suggests what a reasonable bystander would have thought), but it is not determinative.
6. All of the circumstances that the parties knew, or ought to have known, may be taken into account when construing the words of resignation.
7. What must be apparent to the reasonable bystander is that the words of resignation or notice of resignation were intended to have *immediate* effect – an employee should not be taken to have resigned where he or she merely expresses an intention to resign in the future.
8. It must also be apparent to the reasonable bystander that the employee genuinely intended to resign and that they were in their right mind when they did so. That does not mean the resignation has to have been a reasonable thing to do. A resignation will be effective if it is unreasonable but genuinely intended. However, if the employee is behaving irrationally then this would

suggest that the words were not really intended.

9. The assessment of whether the words were genuinely intended should be made at the time that they were said. However, evidence about what happened *afterwards* may cast light on whether the resignation was really intended at the time. That evidence may lead to the conclusion that the resignation was not really intended – if so it will not be effective. On the other hand, such evidence may suggest that the resignation was really intended, but the employee has simply had a change of heart – in which case the resignation will stand. The distinction between these two situations “*is likely to be very fine*” and it is a matter for Tribunals to decide on the particular facts.
10. There is no limit on the period of time after the resignation which may be considered but the longer the time that elapses, the more likely it is that the evidence will be evidence of the employee’s change of heart.
11. The sorts of circumstances that might suggest a resignation was not really intended include where the employee is angry, is behaving out of character, has a relevant mental impairment, is immature or is under extreme pressure from another party. Although none of these factors will necessarily mean that the employee did not intend to resign. Again, this is something for a Tribunal to decide on the facts.
12. These rules apply to written notices of resignation in the same way as verbal notices. However, a written notice will usually indicate a degree of thought and

care by the employee which would make it less likely that a reasonable bystander would conclude that the employee did not mean to resign.

The EAT remitted the case to a fresh Employment Tribunal for a full rehearing, noting that it was a "*finely balanced case*".

What does this mean for employers?

Where a resignation is given in a calm and measured way, and not in response to something which has angered or upset the employee, employers will usually be safe to take it at face value. However, where an employee blurts out words of resignation in a pressured situation, for example, after an argument with a colleague, during a disciplinary process or after a flexible working request has been rejected, employers should pause to assess whether it is reasonable to rely on the resignation.

In these situations, the line manager who received the resignation should make a note of precisely what was said and what they understood by those words. An employer may wish to ask anyone who witnessed the resignation to make a statement of what they saw and understood to have taken place. In some cases, the safest course of action may be to ask the employee to take some time to reflect and, if they still wish to resign, to provide written notice of the same.

Where an employee seeks to retract a heat of the moment

resignation, an employer should have regard to the comprehensive guidelines issued by the EAT in this case and seek advice if necessary. Even where it is concluded that a resignation is *not* effective, an employer may still be able to fairly dismiss the employee for their conduct in connection with the “resignation”. For example, in this case, Mr Omar’s repeated threats of resignation and the fact that he shouted and swore at his line manager would have justified disciplinary action, potentially up to dismissal.

[Omar v Epping Forest District Citizens Advice](#)

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