

Misleading employees can amount to a repudiatory breach of contract

Wainwright v Cennox Plc concerned an employee who resigned after discovering she had been misled about whether she had been replaced on a permanent or temporary basis during cancer-related sick leave and claimed constructive unfair dismissal and discriminatory dismissal. The Employment Appeal Tribunal found that the Employment Tribunal had strayed in its analysis and reasoning by failing to consider whether the employer's discriminatory acts, including providing misleading information, amounted to fundamental breaches of contract that contributed to her resignation.

What happened in this case?

The Claimant was diagnosed with cancer and went on sick leave for treatment. While she was absent, the employer appointed a colleague to her role on a permanent basis but told the Claimant that this was only a temporary arrangement. The Claimant discovered that the replacement was permanent and that her own job title and responsibilities had been altered, which she perceived as a demotion. Following disputes over her role, the handling of a grievance she raised, and her treatment during her illness, she resigned.

She brought constructive unfair dismissal and disability discrimination claims, including that the dismissal itself was discriminatory. The Employment Tribunal upheld part of her discrimination claim but dismissed her claims in relation to

the dismissal (including that her dismissal was discriminatory).

The Claimant appealed to the Employment Appeal Tribunal (**EAT**) in relation to the decision to dismiss her claims for constructive dismissal and discriminatory dismissal.

What was decided?

The EAT upheld the appeal and remitted it to a differently constituted Tribunal to be reconsidered.

The EAT held that the Tribunal had gone wrong in both its analysis and its reasoning in determining the constructive unfair dismissal and discriminatory dismissal claims.

The Tribunal had accepted that discriminatory acts occurred, but had failed to explain adequately why these did not also amount to repudiatory breaches of contract, or form part of Ms Wainwright's reasons for resigning. Given that her resignation letter and witness evidence referred directly to those acts, the EAT said an explanation was required.

The Tribunal had also misapplied the law by assuming that there could only be one cause of resignation. It did not consider whether the discriminatory acts were repudiatory breaches or whether they materially contributed to the Claimant's resignation.

The EAT further held that the Tribunal had failed to analyse

whether misleading the Claimant about whether her replacement was permanent or temporary could itself amount to a breach of the implied term of trust and confidence. The EAT noted that providing untrue statements can be a contractual breach and should have been addressed.

What does this mean for employers?

This decision offers a number of key learning points for employers:

- **Handle reorganisations carefully:** where roles are restructured during an employee's sickness absence, consult openly, explain business reasons clearly, and avoid actions that could reasonably be seen as sidelining or demoting the individual.
- **Adopt a transparent and honest approach:** even where an employer believes it is acting protectively or "softening the blow" for employees, providing inaccurate or misleading information may amount to a repudiatory breach of contract allowing employees to treat themselves as constructively dismissed.
- **There can be multiple reasons for resignation:** an employee may resign for more than one reason. Employers should be aware that discriminatory treatment, even if not the only factor, may still materially contribute to the resignation and lead to liability on the employer's

part.

- **Address grievances promptly and fairly:** delays or poor handling of grievances may increase the risk of constructive dismissal claims.

[Wainwright v Cennox Plc](#)

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