

# **Tribunal finds unfair dismissal even though employee admits to gross misconduct**

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Mr Benali worked as a chef at a Kosher bakery. In 2007-08, he was absent from work for a year as a result of his disability. On his return to work, a dispute arose with his employers over reasonable adjustments to his duties and he issued disability discrimination proceedings which were later settled. However, the requests for adjustments continued and his employers' attitude toward him '*hardened*'.

In 2011, his employers found a receipt for non-kosher jam, which Mr Benali admitted to using in a cake. An investigation was carried out where a few employees were questioned. Mr Benali attended a disciplinary hearing and was subsequently summarily dismissed without his employer investigating his defence. He brought claims for wrongful dismissal, unfair dismissal and victimisation. The Employment Appeal Tribunal found that:

1. there was no case for wrongful dismissal on the grounds that Mr Benali's conduct in using non-kosher jam was an act of misconduct that would entitle his employer to dismiss summarily;
2. that he had been dismissed not for gross misconduct but because he was considered a problem employee as a result of his ongoing requests for adjustments, which amounted to victimisation; and
3. the dismissal was unfair because of the poor levels of investigation into the jam incident.

The case has been remitted back to the Tribunal to consider whether the compensation for unfair dismissal should be reduced to take into account any 'contributory fault' of Mr Benali in his dismissal. We will provide a further update when a decision has been reached. In the meantime, this case demonstrates the necessity in carrying out a reasonable

investigation even where the employee has admitted to committing an act of gross misconduct.

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