Was a dismissal discriminatory where the employer did not know about the employee’s disability until after the dismissal?

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In the recent case of Stott v Ralli Ltd the Employment Appeal Tribunal ruled that the dismissal of an employee was not an act of discrimination arising from disability.

What happened in this case?

The Claimant was employed as a paralegal by Ralli Ltd for approximately three months. She was dismissed for poor performance and was paid in lieu of notice. Following the dismissal meeting, the Claimant raised a grievance and stated that Ralli had been informed of her mental health issues in several communications. At the grievance meeting, she said that her disabilities were mental health issues, anxiety, depression and a heart condition. She claimed that her mental health issues had affected her performance.

Ralli rejected her grievance, stating that they had not been informed about her disabilities. Her appeal was also unsuccessful. The Claimant went on to bring a claim in the Employment Tribunal for discrimination arising from disability in relation to her dismissal. As she did not have two years’ service, she was not able to bring a claim for unfair dismissal.

Ralli accepted that the Claimant had a mental impairment amounting to a disability at the time of her dismissal but argued that it had not known about this at the time and that it had only been raised after her dismissal. In any event, it

argued that any unfavourable treatment would have been justified.

The Employment Tribunal dismissed the claim, finding that the Claimant had been dismissed for poor performance and that the Claimant had not disclosed her impairment to Ralli prior to her dismissal. The Claimant appealed on a number of grounds, notably that the Employment Tribunal should have regarded her grievance and the grievance appeal as an integral part of the dismissal process and should have concluded that, by the end of that process, Ralli had knowledge, or constructive knowledge, of her disability.

What was decided by the Employment Appeal Tribunal?

The EAT held that even on the most fair or generous reading the claim had been brought solely in relation to the dismissal. Therefore, the Employment Tribunal had been correct to treat knowledge (or constructive knowledge) which had been acquired after the dismissal as irrelevant to the claim.

While in unfair dismissal claims dismissal is regarded as a process encompassing the appeal stage and outcome, the EAT held that there is no legal principle requiring the same approach to be taken in discrimination claims.

What does this mean for employers?

Had the Claimant pleaded her claim more widely to include post-dismissal discrimination, relating to the grievance process and subsequent treatment (when the employer had knowledge of her disability) the outcome may have been different. So, in reality, the employer got lucky. In the ordinary course, if an employer has learned about dismissal during an appeal process, it may still be held liable for disability discrimination and so should act with due care when this happens.

Stott v Ralli Ltd

If you would like to discuss any issues arising out of this decision please contact Theo Nicou (theonicou@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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