

When are whistleblowers protected from dismissal?

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A dismissal can be automatically unfair even in circumstances where the decision-maker was unaware that the employee had blown the whistle.

Ms Jhuti worked for Royal Mail from September 2013. Soon after she started working there, she accompanied a colleague to a customer meeting and suspected that some of the things said in that meeting breached Royal Mail's rules and regulatory requirements. Ms Jhuti raised her concerns with her line

manager, Mr Widmer, but was told that she had misunderstood the rules and was advised to retract her allegation. She reluctantly did so.

Mr Widmer began setting Ms Jhuti unattainable performance targets and required her to attend frequent supervision meetings. After putting in several complaints to HR, Ms Jhuti went on sick leave and raised a grievance.

Another manager, Ms Vickers, was appointed to examine Ms Jhuti's case but was unaware of her disclosures. Mr Widmer mentioned to Ms Vickers that Ms Jhuti had previously made allegations, but that she had then withdrawn them. Ms Vickers accepted this and, as Ms Jhuti was on sick leave, did not probe any further. Ms Vickers terminated Ms Jhuti's employment for poor performance.

Ms Jhuti brought a claim for automatically unfair dismissal on the basis of her whistleblowing disclosures.

The Employment Appeal Tribunal upheld Ms Jhuti's claim on the basis that it did not matter whether Ms Vickers, the dismissing officer, knew of Ms Jhuti's protected disclosures when she made her decision. The EAT stated that where one person who is unaware of the true situation is manipulated by another person at managerial level, and that manager does have the true facts, the employer can be held responsible for the ultimate decision.

This case tries to circumvent the problem whereby employers could escape liability for whistleblowing dismissals by putting an unwitting manager in the role of dismissing officer.

Royal Mail Group Limited v Jhuti UKEAT/0020/16

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