

Employment

Redundancy made easier by a recent EAT ruling

The Employment Appeal Tribunal (EAT) recently ruled that an Employment Tribunal (ET) was right to dismiss a disability discrimination claim when an employer made a disabled employee redundant. This was on the basis that the company was able to cope without him during his 2-month absence, especially when the company was undergoing internal changes to restructure and make cost savings: ***Charlesworth v Dransfields Engineering Services Ltd*** (UKEAT/0197/16/JOJ).

The employee had renal cancer for which he was hospitalised and was signed off sick for two months. During his absence his employer found that it could manage without him and therefore decided to make his role redundant due to the diminished requirement for his role and identified a costs savings of £40,000 if he were to be made redundant. When Mr Charlesworth returned to work, he was soon dismissed for redundancy and subsequently brought claims of i) direct disability discrimination, ii) discrimination arising from disability and iii) unfair dismissal. The ET found against Mr Charlesworth on all grounds. On ii) the ET found that the employee's absence was not an effective or operative cause of his dismissal but that the matter that caused the employee's dismissal was the employer's view that it could do without him.

On appeal, the EAT ruled that there was nothing wrong with the ET's conclusion that the employee's absence was not an effective cause of his dismissal because of its finding that the employer found that it could cope without him, as well as their desire to restructure the business and make cost savings. The EAT found that the ET applied the correct test of using "effective cause", the causal connection being the employee's absence (due to his disability) and his being made redundant.

This is a helpful ruling for employers who are in genuine need of restructuring their businesses but may be afraid of infringing the Equality Act 2010 because an employee who may potentially be at risk of redundancy is disabled or has been off sick preceding a redundancy exercise. That said, employers are strongly advised to seek legal advice if they are faced with situations of this kind as discrimination is a sensitive issue for all concerned and employers must act carefully to stay on the right side of the law. It is always important to remember that there is no cap on damages for unlawful act of discrimination in the Employment Tribunal.



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