

Employer unfairly dismisses a pharmacist with less than twelve months service

↓ THE CASE

An employer wrote to an employee pharmacist on Christmas Eve to inform him that he was not satisfied with his performance and he was not expected to come back in to the Pharmacy again. He enclosed a cheque for £1000 'in lieu of notice'. The pharmacist had been employed exactly eleven months.

This was the first time the employee had been given any indication that his performance was inadequate. Indeed he had achieved all his targets and was expecting a bonus.

When challenged, the owner maintained that the employee had no employment rights in law, as he had been in his employment for less

than twelve months. It became apparent that the employer cynically dismissed the pharmacist under the ill-conceived notion that there would be no repercussions or claims against him for breach of employment law. The employer intended to replace the highly paid, experienced pharmacist who was due a significant bonus, with a young inexperienced, relatively inexpensive one.

The pharmacist had no written employment contract and the employer was in breach of his obligations under the Employment Rights Act 1996 ['ERA 1996']

↓ FACTS AFFECTING THE CASE

Technically, an employee's rights under the Employment Rights Act 1996 are limited if they have less than twelve months service, but service would also include a notice period. Giving the employer the benefit of the doubt, and assuming that a contract existed that stipulated the notice period was less than one month, his behaviour MAY have been acceptable in law if not in spirit. However, even if we were to give him credit for being so devious, if not ethical, he acted in such a way that acknowledged this fact by only giving the employee £1000 in lieu of notice which was insufficient to cover a months pay. He was therefore giving the pharmacist more like two weeks notice.

The ERA 1996 states that "in the event that a written statement of particulars of employment is not provided by the employer in accordance with the requirements of the Act, the employee may apply to an Employment Tribunal to have the particulars of the employment

contract determined by [and if necessary then enforced by] the Tribunal". Where there is a dispute as to the terms agreed between the employer and the employee, the Tribunal will often 'penalise' the defaulting employer, by interpreting disputed versions of the agreement in favour of the employee, this being the 'price' often to be paid by employers who willingly and knowingly flout the law. Therefore if the 'norm' notice period in the industry is two months, it would not be unrealistic for a pharmacist to assume that the contractual notice period would be a minimum of one month, which would have brought this particular employee within the protection of employment legislation and able to claim unfair dismissal.

The employer retreated and paid a significant amount of compensation to the pharmacist to head off the inevitable legal action.

→ Learning points:

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01. It is advisable to have a written contract of employment at the start of your employment
02. The law requires a "written statement of the terms and conditions of employment" to be given to employees within 2 months of commencing work.
03. If you do not have a current written contract, you are not obliged to sign a new one if you believe that the express / implied terms of your current oral contract are being changed.
04. Ask a legal representative to check your contract.
05. It is a myth to suggest that an employee is powerless to do anything about being dismissed during the first year of employment without any reasonable cause. They may not be able to claim unfair dismissal, but they may nonetheless be able to sue for breach of contract.
06. If in doubt, contact the PDA.

Use of suspect disciplinary procedures

↓ THE CASE

A pharmacist shopped in the body of the store for an item required for immediate use. She took the single item to the pharmacy, was immediately distracted and did not pay for the item before security were 'tipped off' that she had an item she had not paid for. She made no attempt to hide the item or deceive her employer, though she foolishly breached company procedures. Without warning, she was subjected to an intimidating interview without a representative, by security and one of the store's departmental managers. She was suspended without pay with a view to dismissal. At this point the PDA were contacted, advised her of her rights and pointed out to her employer that they had not followed their laid-down disciplinary procedures.

At the new disciplinary hearing, which then followed, the proper disciplinary procedure was used, the pharmacist was reinstated with full pay, and she received a written warning.

If the issue had remained thus, the PDA would have been satisfied. Sadly, what followed was what very much looked like a series of traps set for the pharmacist, which would almost certainly, if she had fallen into them, led to further disciplinary action and likely dismissal. This culminated in a member of staff buying a NSAID gel and then complaining to the non-pharmacist duty manager that the pharmacist had sold her a product that was contra-indicated with her treatment by her GP.

The pharmacist was again called to a disciplinary meeting at short notice with the non-pharmacist duty manager and a HR manager in attendance, accused of providing medication unfit for its purpose. Fortunately the pharmacist this time requested that the meeting be terminated and contacted the PDA. The subsequent disciplinary hearing, with a Pharmacist manager, led to a warning and return to work.

↓ FACTS AFFECTING THE CASE

A statutory employment code of practice, the 'ACAS' code lays down a number of things:

- The requirement for employers to have formal disciplinary and grievance procedures.
- There is the statutory right to be accompanied at formal disciplinary hearings, by either a work colleague or trade union representative.
- That proper notice of disciplinary hearings and their purpose, must be given to employees.
- That such notice shall be sufficiently long to enable them to

prepare for, be advised before and attend the hearing with a permitted person.

If the employee had resigned there would have been a strong case for constructive dismissal based on incorrect procedures and harassment. Furthermore the 'disciplining managers', who knew nothing about pharmacy or its professional responsibilities, decided to attempt to discipline a pharmacist on a professional matter. The PDA put the Superintendent Pharmacist on notice that unless assurances could be given that another Pharmacist would hold any planned disciplinary action in this case, a formal complaint would be made to the RPSGB.

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01. If an employer convenes a disciplinary meeting and you are not accompanied, you should immediately refer the employer to the above regulations and request the meeting terminated and the hearing held at a later date.
02. If the employer insists on continuing with the disciplinary 'hearing' you should seriously consider leaving and refusing to continue, stating why you are doing so.
03. Alternatively, if you continue, you should insist that the employer records the fact that you have objected to the meeting being turned into a disciplinary hearing, and knows that you will consider any decision reached unfair and seek to refer it to an Employment Tribunal at a later stage: this may make the employer reconsider continuing.
04. Should the meeting still go ahead, you should seek to introduce a work colleague immediately if possible and attempt to record or have him/her record details of the events that then follow. Furthermore, you should ask for a written record of the hearing and **YOU SHOULD NOT SIGN ANY STATEMENT or RECORD unless you are COMPLETELY SURE** about it, even if the employer demands that you do so. If forced to sign, mark the document to the effect that you have indeed been forced, such as by signing: "Signed under duress by...."