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Monday Morning Dispatch

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MONDAY MORNING DISPATCH
BY Chadwick Lawrence

YOUR WEEKLY EMPLOYMENT LAW NEWSLETTER FROM CHADWICK LAWRENCE LLP

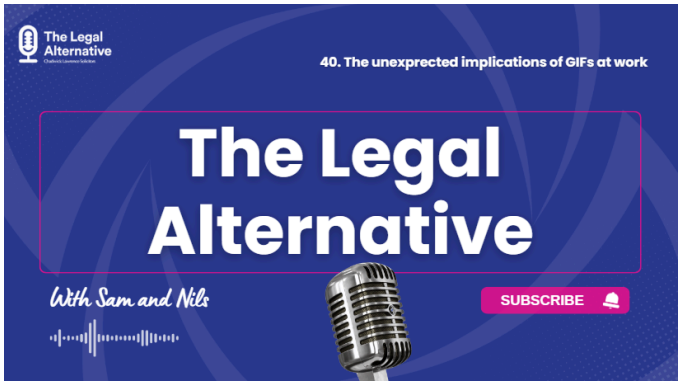
Coming up this week...

- This week on the Legal Alternative we explore a rising habit among workers online, GIFs, and the hidden potential damage that may accompany them...
- This weeks article continues to look at unfair dismissal, this time focusing on a case involving statutory rights and the importance of following due process as an employer.
- We are still taking requests regarding our coming seminars programme and podcast series which we will begin to roll out again from September, please reach out to us either via email or find our LinkedIn at Chadwick Lawrence Employment.

The Legal Alternative Podcast

Sam and Nils are back this week discussing the hidden risks and implications of the casual use of GIFs in the work place. This growing and common practice among many workplaces is seemingly harmless but in this weeks episode we explore how the unprofessional use of GIFs in one instance led to a harassment case between colleagues...

We are looking to introduce a monthly *special guest episode* which we hope to start rolling out in September.



If you have a topic you would like to discuss or fancy a spot on the pod please reach out to emilyshepherd@chadlaw.co.uk

In the News

Working Time Regulations and Automatic Unfair Dismissal: A Lesson from a Recent Case




UNFAIR
DISMISSAL

Most employees require two years' service of continuous service before they can bring a claim of ordinary unfair dismissal. However, where the reason for the dismissal relates to certain activities, including asserting a statutory right or making protected disclosures, an employee is able to pursue a claim of automatic unfair dismissal from day one of employment.

For employers, these claims can be particularly risky because the focus is not on whether the employer acted reasonably, but on the reason for the dismissal itself. If the principal reason for dismissal falls within one of the statutory protections, the dismissal will be automatically unfair.

This issue was considered in a recent Employment Tribunal case involving Mr S Cohen and his employer, Ross + Liddell Ltd. As the Claimant had not accrued two years' service, he could not pursue an ordinary unfair dismissal claim. The Tribunal therefore had to determine whether the reason for his dismissal fell within the protections afforded by sections 103 or 104 of the Employment Rights Act 1996, including whether he had been dismissed for asserting a statutory right.

The Facts:

The Claimant was employed as a lift attendant from 22nd June 2024 until his employment terminated on 15th August 2025.

The Claimant was told to attend a meeting via telephone and at short notice on 18th July 2025, without being told its purpose. During the meeting, a discussion arose regarding his mannerisms and use of language.

The conversation then turned to annual leave. The Claimant stated he believed he had been incorrectly denied holiday entitlement despite regularly working six days per week and described the employer's position as unlawful. During this discussion, the Claimant indicated that he thought he may need to pursue a claim in the Employment Tribunal.

A second manager then joined the meeting and sought clarification regarding his comments about legal action. When the Claimant again raised concerns about his holiday entitlement, he was told that the meeting concerned allegations that he had used inappropriate language in front of clients.

The Claimant denied recalling the alleged incident and suggested that witness evidence should be obtained to establish what had occurred. The discussion became increasingly tense, with management criticising his behaviour and attitude during the meeting. Shortly after the Claimant reiterated his position regarding his legal rights, the meeting concluded with the employer terminating his employment with immediate effect. Specifically, she stated: *"You know what - forget it. Just go, OK. What we'll do, we'll just terminate your contract."*

Tribunal's Findings:

The Tribunal had little difficulty in rejecting the Respondent's justification for the dismissal by referencing the Claimant's alleged swearing and poor attitude. In particular, the Judge noted that these explanations were absent from any evidence. Namely, they were not properly put to the Claimant during the meeting, did not feature in the dismissal letter and were unsupported by the Respondent's own records.

As such, the Judge concluded that these reasons had been *"advanced after the fact"* in an attempt to retrospectively justify the decision to dismiss. Therefore, the Tribunal focused on what was actually said during the meeting itself.

A particular significant aspect of the evidence came from Jennifer Harkins, who was asked directly why the decision had been taken to dismiss the Claimant. She identified three factors:

1. The Claimant's alleged aggression towards Jasmine McKenna;

2. The alleged swearing incident on site earlier that day; and

3. The Claimant's threat to take the Company to the Employment Tribunal.

By expressly identifying the Claimant's reference to Tribunal proceedings and his legal rights as one of the reasons for dismissal, the Respondent effectively accepted that the assertion of a statutory right formed part of its decision-making process.

Therefore, the Tribunal then had to determine not whether that assertion of rights was a reason for dismissal, but whether it was the **sole or principal reason**. While the Judge accepted that other factors were discussed during the meeting, including concerns regarding the Claimant's conduct, the Tribunal ultimately found that these matters were lesser factors. Therefore, while it was not the *sole* reason, it was found that the Claimant's complaint about his employment rights (and his indication that he was prepared to enforce those rights) was still the *principal* reason.

Accordingly, the dismissal fell within the protection afforded by section 104 of the Employment Rights Act 1996 and was held to be automatically unfair.

The Employer's Wider Failings:

The Tribunal's conclusions were reinforced by evidence of several other significant failings.

Among other things, the Tribunal found that the Claimant had worked substantial additional hours beyond those specified in his contract. Although only contracted to work six hours per week, he had accumulated approximately 1,450 hours of overtime. Despite contractual provisions entitling him to enhanced overtime rates, those hours had been paid only at his basic rate of pay.

The Tribunal also heard evidence that the Claimant had not received his full holiday entitlement and that the Respondent had failed to provide a written statement of employment particulars (i.e. a contract) until approximately nine months after the commencement of his employment, which was well outside the statutory timeframe.

The disciplinary process itself was also found to be flawed. Once the meeting evolved into a disciplinary discussion, the Claimant was given no advance warning that his employment was at risk, no meaningful opportunity to respond to the allegations being made against him and no chance to be accompanied by a colleague or trade union representative.

Consequently, the Judge found that the Respondent had "*wholly failed*" to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Rather than following a fair and transparent process, the decision to dismiss was taken during an unplanned meeting and immediately after the Claimant had challenged what he believed to be unlawful treatment.

Outcome:

In total, the Respondent has been ordered to pay the Claimant £54,545.50. This comprised of:

- £36,742.42 for unfair dismissal.

- £12,585.68 for unpaid wages, covering the 1,450 hours of overtime.

- £1,890 for unpaid holiday pay.

- £1,663.20 for the breach of the Claimant's right to be accompanied to the disciplinary hearing.

Key Takeaways for Employers:

This decision serves as a reminder that employers must exercise caution when an employee raises concerns about their legal rights. Even where there are genuine conduct or performance concerns, dismissing an employee shortly after they have asserted a statutory right can create a strong inference that those assertions were the real reason for the dismissal.

Importantly, length of service offers no protection to the employer in these cases.

Upcoming Seminars & Events



We are currently in the process of planning our next programme of seminars, which we expect will begin in September. In the meantime, we would really value your input...

If there are any topics you would like us to cover, please let us know!

Your feedback and suggestions are invaluable in helping us deliver insightful, practical content that is accessible, so please don't hesitate to get in touch.

Email emilyshepherd@chadlaw.co.uk or find us on LinkedIn.

Mental Health Awareness Sessions

We're partnering with Tailored Learning Solutions to offer two day, in person, accredited Mental Health First Aid courses at our Wakefield office.

Accredited by MHFA England® and the Royal Society for Public Health, MHFAiders will improve knowledge and develop skills to support someone who may struggling and what to do with crisis support.

MHFA 2 day (all day events) - £300 +VAT pp.

29/30 APR

1/2 JUL

30/1 SEPT/OCT

(Includes 3 year membership to the Associate for MFAiders, 3 years access to the MHFA Support App, Immediate wellbeing support via SHOUT charity, Quarterly Webinars and optional Level 3 OfQual Examination accredited with the Royal Society for Public Health)

🔗 More info on MHFA and ND courses can be found here:
https://www.tailoredlearningsolutions.co.uk/mental-health-first-aid

Contact Us

For questions, feedback, article ideas, or story contributions, email boxhr@chadlaw.co.uk and we'll be in touch.

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