

Automatically unfair dismissal: Should the motivation of anyone except for a decision maker be taken into account?

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An employee was automatically unfairly dismissed because the investigation was driven by a manager who was motivated by resentment over his trade union activities.

THE FACTS

Mr Singh was employed by Cadent Gas Ltd as a gas engineer. He was an active trade union official who, in this role, regularly raised concerns. He had also raised several grievances, including complaints relating to a manager, Mr Huckerby. Cadent Gas had found the number of grievances and concerns raised by Mr Singh to be challenging. Mr Huckerby had noted in emails that Mr Singh's trade union activities needed to be kept "on the radar".

Mr Singh's role required him to attend priority gas leaks without delay. In June 2017, having had virtually no food or rest for a long period, he was required to attend a priority gas leak. He stopped off to get some food on the way and arrived one minute later than the time stipulated in the service level agreement. The failure to meet the requirements of the service level agreement was noted by Mr Huckerby, who played a leading role into an investigation into the incident.

The subsequent disciplinary meeting was conducted by Mr Wilson, who had not had any prior involvement. He decided to dismiss Mr Singh for gross misconduct.

Mr Singh claimed, among other things, that the reason or principal reason for his dismissal was his trade union activities. The employment tribunal upheld his claim. The tribunal considered that the hearing manager and the appeal manager were not motivated by prejudice against Mr Singh for his trade union activities. However, there was a history of conflict between Mr Huckerby and Mr Singh related to Mr Singh's trade union activities and Mr Huckerby had an active role in driving the investigation (which was not normal for a manager of his seniority), which led to Mr Singh being treated more harshly than other employees against whom similar allegations had been made. Mr Huckerby had referred to Mr Singh's trade union status in internal emails about the investigation and was found to have given misleading information to the decision maker. This, the tribunal held, established a prima facie case.

Cadent Gas unsuccessfully appealed to the EAT on four grounds, two of which were that the tribunal had erred:

- In finding against Cadent Gas after having concluded that the decision makers were not motivated by Mr Singh's trade union activities.
- In placing reliance on the motivations of non-decision makers, including Mr Huckerby.

The EAT considered that the tribunal had demonstrated a belief that the decision makers were motivated by Mr Singh's trade union activities. However, even if this had not been the case, the EAT held that it was appropriate for the tribunal to have considered the motivations of Mr Huckerby. Generally, it is the motivation of the decision maker that is key. However, there are situations where the motivation of a non-decision maker may be attributed to the employer, even where that motivation is not shared by the decision maker. Given Mr Huckerby's leading role in the investigation, it was appropriate to attribute his motivation to Cadent Gas even if the motivation might not have been shared by the disciplinary chairs.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Employers should be careful to make sure, as much as possible, that all individuals involved on behalf of the employer in disciplinary action, including the investigator, are not vulnerable to allegations of bias because of previous interactions with the employee. Caution should be exercised to ensure employees are not treated differently to others facing similar allegations as a matter of good practice in any event

[Cadent Gas Ltd v Singh UKEAT/0024/19](#)

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