

Whistleblowing: Taking action against a worker for the manner in which they blow the whistle

Published 9 July 2020

The EAT has considered whether taking action against a worker for their manner in blowing the whistle should be treated as a whistleblowing detriment.

THE FACTS

Mr Riley is a mortgage broker. He was engaged by Belmont Green Finance Limited, a mortgage lender, on a temporary assignment. Following a meeting with Mr Todd, a senior underwriter, his assignment was terminated and he was escorted off the premises.

Mr Riley claimed in the Employment Tribunal that the termination of his assignment and the way in which he had been escorted off the premises were whistleblowing detriments.

Mr Riley's evidence in the Employment Tribunal about what he had said to Mr Todd in the meeting conflicted with the evidence given by Mr Todd. Both agreed that Mr Riley had made complaints about working for Belmont Green, including complaints about work being wrongly allocated to Mr Riley, about his telephone and the IT systems and processing. However, Mr Riley's evidence was that he had also raised concerns about the allocation of work to inexperienced personnel and about the company's lending practices, which (he claimed) he believed were in breach of regulatory requirements. He claimed that these were whistleblowing disclosures. Mr Todd's evidence was that Mr Riley had not raised these concerns.

The Employment Tribunal preferred Mr Todd's evidence, finding that Mr Riley had not raised concerns about lending practices, regulatory breaches or inexperienced personnel.

The Employment Tribunal found that Belmont Green had decided to dismiss Mr Riley because of his attitude and manner in the meeting with Mr Todd, at which he had been generally negative and dismissive about the company, and because his managers were unhappy with the way in which he had dealt with other staff.

The Employment Tribunal went on to find that the concerns that Mr Riley had raised were not whistleblowing disclosures.

Mr Riley appealed to the EAT. The EAT dismissed his argument that the Tribunal's finding in relation to Mr Riley's evidence about the meeting with Mr Todd was perverse. Mr Riley also argued that the Employment Tribunal should have considered (and did not) whether Mr Riley's attitude and manner in the meeting (for which he had been dismissed) could be separated from the whistleblowing allegations that he claimed to have made. The EAT upheld this ground of appeal. Referring to existing case law, the EAT drew a distinction between "ordinary" unreasonable behaviour, and "offensive or abusive" behaviour. Taking action against a worker for "ordinary" unreasonable behaviour, when raising a whistleblowing allegation, should be treated as taking action against the worker for raising a whistleblowing allegation. On the Tribunal's findings, Mr Riley's attitude and manner had been "ordinary" whistleblowing behaviour. The detrimental treatment to which he had been subjected should therefore be treated as having been on the grounds of the disclosures he had made. His manner and attitude had not been distinguished from the concerns themselves.

However, the EAT agreed with the Employment Tribunal that the complaints that Mr Riley had made were not whistleblowing complaints. He had not, therefore, been subjected to detriment because of whistleblowing.

WHAT DOES THIS MEAN FOR EMPLOYERS?

It is not unusual for whistleblowers to blow the whistle in a manner which their employer finds problematic. However, employers should be cautious in taking action against a worker for the way in which they raise an allegation: it will be difficult (but not impossible) to show that action is taken for the manner of raising the allegation rather than because they have made a whistleblowing complaint.

[Belmont Green Finance Ltd T/A Vida Homeloans UKEAT/0133/19/BA](#)

Authors

London - Walbrook
+44 (0)20 7894 6583
cfuller@dacbeachcroft.com



London - Walbrook
+44 (0)20 7894 6564
zwigan@dacbeachcroft.com



Hilary Larter

Leeds
+44 (0)113 251 4710
hlarter@dacbeachcroft.com



dac
DAC BEACHCROFT