
Time off for dependants: Employee was fairly dismissed after taking time off because he failed to contact his employer as soon as reasonably practicable

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Facts:

The claimant, Mr Ellis, had a contract of employment with Ratcliff which provided that if he was going to be absent due to illness or injury he had to notify his line manager by no later than 30 minutes after he should have started work. If the manager was not available, he needed to leave a message on the company's absence line. Mr Ellis was given a final written warning on 25 November 2011 as the result of attendance issues. The warning was to remain on his file for 12 months and stated that future failure to work his required hours could lead to dismissal.

Mr Ellis's partner was heavily pregnant. There had been concerns about her health and, on Monday 6 February, Mr Ellis took her to hospital several times. However, he did not make contact with his employer to explain the situation. Instead Mr Ellis's father telephoned in the afternoon. The next day Mr Ellis accompanied his partner to hospital where she was admitted to have the baby. He did not attend work and did not telephone Ratcliff. When, after prompting by a text, Mr Ellis called the office on Wednesday 8 February he was severely criticised for failing to make contact and for not coming in to work. That evening he left a message on the company's answerphone stating that he would not be in work the following day.

Mr Ellis was called to a disciplinary hearing a week later. He claimed that the battery of his mobile phone had run out, so he had called his father using the hospital payphone and asked him to phone Ratcliff because he could not remember his employer's phone number. Ratcliff found that he had failed to make reasonable efforts to inform it that he would not be attending work during the week of 6 February 2012, and in light of the live warning on his file Mr Ellis was dismissed. After an unsuccessful appeal he brought tribunal proceedings arguing that he had been automatically unfairly dismissed for taking time off to deal with an emergency of a dependant.

An employment judge dismissed his claim. The judge found that Mr Ellis had failed to contact his employer as soon as reasonably practicable. Mr Ellis had a number of other options he did not take: if his phone battery had run down, Mr Ellis could have recharged it in time to make appropriate phone calls early in the morning to his employers. Once his partner had gone into labour he could have gone into the corridor and made a quick call to his employer, which he failed to do. He could have borrowed a phone, or there was a payphone available that he could have used. Mr Ellis appealed to the EAT who dismissed the appeal.

The EAT found that the employment judge had correctly analysed the sequence of events. He rejected Mr Ellis's explanation regarding his phone running out of battery and that he could not contact Ratcliff until Wednesday evening. In terms of whether Mr Ellis had told Ratcliff the reason for his absence as soon as was reasonably practicable this was fact specific. The test of reasonable practicability is not confined to what is reasonably capable physically of being done, and should take account of the employee's mental state. The judge had taken account of this and made the right decision.

What this means for employers:

This case highlights that regardless of being distracted by an emergency, employees need to think of, and use, any means at their disposal to contact their employer if they take time off to deal with an emergency involving a dependant. In an age when we are so digitally connected this is not an onerous requirement. In this case if Mr Ellis had Ratcliff's telephone number stored in his fully charged mobile phone, and used it, he would have been protected from losing his job.