

UNFAIR DISMISSAL: DISMISSAL FOR ILL-HEALTH WHERE EMPLOYER IS PARTLY TO BLAME

The Court of Appeal has held that where the employer caused or contributed to an employee's long-term sickness absence, this fact should be considered by the employer when deciding whether or not to dismiss the employee on the grounds of incapacity (*McAdie v Royal Bank of Scotland*). However, it does not preclude the employer from dismissing the employee providing that the dismissal is fair "in the circumstances". In determining what is fair "in the circumstances", consideration should be given to the employer's responsibility for the incapacity. If an employer has caused or contributed to the incapacity it should make an extra effort to find the employee alternative employment and should be prepared to "put up with a longer period of sickness absence than would otherwise be reasonable". In this particular case Ms McAdie was on long-term sickness absence as a result of bullying and mismanagement by her employer, but the dismissal was held to be fair in the circumstances.

DISABILITY DISCRIMINATION: SUBSTANTIAL EFFECT ON DAY-TO-DAY ACTIVITIES

In *Patterson v Commissioner of Police of the Metropolis*, the EAT held that a Chief Inspector with 15 years' service who discovered he was dyslexic was "disabled" within the meaning of disability legislation. Though he had not previously had any difficulties in performing his duties, the medical evidence recommended that he be given extra time in forthcoming examinations as a result of his dyslexia. The Tribunal had held that the dyslexia had only a minor impact on the Chief Inspector's day-to-day activities and therefore he was not "disabled". The EAT disagreed and held that in determining whether the Chief Inspector was "disabled" the comparison should be between what an individual can do, and what he would be able to do without the impairment. The Chief Inspector needed 25% extra time to complete the examinations and was therefore at a substantial disadvantage when compared to position if he did not have dyslexia.

If you have any queries on this, please call Richard Woolmer 0207 614 3577 or email richard.woolmer@parkerandcosolicitors.com

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