

Unfair dismissal - political opinions or affiliation

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CATEGORY:
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The Enterprise and Regulatory Reform Act, which received Royal Assent on 25 April, will introduce a new exception to the qualifying period of employment for unfair dismissal in cases where 'the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation'. The change will take effect on 25 June 2013.

This amendment is intended to implement the European Court of Human Rights' 2012 judgment in the case of *Redfearn v The United Kingdom*. The case, which was widely reported in the press, involved a bus driver who was summarily dismissed by Serco Limited after he was elected as a local councillor for the British National Party. Serco sought to justify Mr Redfearn's dismissal on the basis that his continued employment jeopardised its reputation and posed a potential health and safety risk for its passengers, the majority of whom were Asian. Notably there had never been any complaints about Mr Redfearn's work or his conduct at work, either by service users or by his colleagues; indeed, Mr Redfearn had recently been nominated for the award of 'first-class employee' by his supervisor.

Mr Redfearn was unable to bring a claim for unfair dismissal as he had less than one year's continuous employment. Instead, his claim (which was dismissed by the Employment Tribunal and subsequently upheld by the Employment Appeal Tribunal) was that he had been unlawfully discriminated against on the grounds of race. On appeal, the Court of Appeal held that Mr Redfearn's complaint, when properly analysed, was of discrimination on political grounds, which fell outside the scope of anti-discrimination laws. Mr Redfearn was refused leave to appeal to the House of Lords and so pursued a claim before the European Court of Human Rights.

The European Court of Human Rights held that the UK was under a positive obligation to protect employees, including those with less than one year's service, from dismissal on grounds of political opinion or affiliation, either through creating a further exception to the qualifying period for unfair dismissal claims or through creating a free-standing claim for unlawful discrimination on grounds of political opinion or affiliation. The Court noted that protection was offered to employees dismissed on grounds such as race, sex and religion, but that no additional protection was afforded to employees who were dismissed on grounds of political opinion or affiliation. Accordingly, the UK had not taken reasonable and appropriate steps to safeguard Mr Redfearn's rights to freedom of assembly and association under Article 11 of the European Convention on Human Rights ('ECHR').

The government has decided to adopt the first approach suggested by the European Court, namely to create a further exception to the qualifying period for unfair dismissal claims. In choosing not to extend the ambit of discrimination law, there remains a lack of protection for employees who suffer less favourable treatment falling short of a dismissal because of their political opinion or affiliation.

The effect of the government's proposed amendment is that employees with less than the qualifying period of service will be able to bring a claim for unfair dismissal where the sole or principle reason for their dismissal was their political opinion or affiliation. A dismissal motivated by such factors will not be automatically unfair, meaning that the tribunal will still need to judge the fairness of the dismissal by reference to normal principles. Given that employment tribunals are bound by the Human Rights Act 1998 to interpret the law in a manner compatible with the ECHR, it is unclear to what extent a dismissal may be considered to have been 'fair' if it clearly infringed an employee's rights under Article 11 of the ECHR.

Implications for employers

Many employers are accustomed to dealing effectively with a divergence of views amongst their workforce. Problems arising out of strongly held political beliefs will in some respects be similar to problems arising out of strongly held religious beliefs. Employers may find themselves in difficulty where the way those beliefs are manifested causes friction in the workplace. In theory they should then be entitled to act, but in practice the dividing line between holding a belief and manifesting it can be hard to draw. Employers should make the standards of conduct they expect from all employees clear and accessible.