



Dismissal and the right to be accompanied

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Background

The right for a worker to be accompanied to disciplinary meetings is well known, but the details as to exactly what the right does and does not consist of is more complex. A recent case in the Employment Appeal Tribunal of Wolfe v Taka Mayfair comes as a useful reminder.

The facts of that case are simple. Mr Wolfe was employed from December 2022 and just one month later, without any notice of what it was to be about, he was called to a meeting with Taka's owners. At the end of this meeting he was dismissed. He did not have the service to claim unfair dismissal, so he attempted to bring a claim for the failure of his employer to allow him to be accompanied to that meeting.

The legal right

This comes from the Employment Relations Act 1999. It says (with our bold emphasis):

10. Right to be accompanied

1. This section applies where a worker-

- is required or invited by his employer to attend a disciplinary or grievance meeting, **and**
- **reasonably** requests to be accompanied at the hearing

The person accompanying the worker is allowed to put their case, sum it up and respond on their behalf to any view expressed at the hearing. What they cannot do is to answer questions on the workers behalf, address the hearing if the worker does not want them to do so or behave in a way that stops the employer or any individual from making their contribution to the hearing.

The person who accompanies the worker must be chosen by them (not the employer) and must be either a trade union official, a trade union representative who has been certified as having experience or training in disciplinary/grievance hearings or another of employer's workers.

Interestingly, a worker may make a complaint to an employment tribunal that the employer failed "or threatened to fail" with the right to be accompanied.

Further interpretation provisions say:

"a worker means an individual who is

- a worker within the meaning of section 230(3) Employment Rights Act 1996,
- an agency worker
- a home worker"

"a disciplinary hearing is a hearing which could result in:

- the administration of a formal warning to a worker by his employer
- the taking of some other action in respect of a worker by his employer, or
- the confirmation of a warning issued or some other action taken"

The penalty for an employer is capped to a maximum of two weeks' pay.

Reflections on the statutory right

The right is not just for employees but also those with the classification of worker (that is they provide work personally and not for a party who is a client of theirs) as well as agency workers. Even though a worker does not have the same unfair dismissal rights as an employee with 2 years' service (soon to be 6 months) and so cannot challenge the fairness of a dismissal, the stand alone right to be accompanied still allows them to make a claim for that. There is no length of service requirement either, for workers or employees.

What happened with Mr Wolfe's claim?

This basically turned on the word "and" which we have highlighted above. Mr Wolfe was a worker and the meeting that concluded with his dismissal amounted to a disciplinary hearing. However, he never made a request to be accompanied to that meeting.

Mr Wolfe argued, with some logic, that he

could not reasonably request to be accompanied if the employer had not, firstly, acted reasonably by informing him that the potential outcome could be his dismissal. However, both the employment tribunal and then the appeal tribunal considered that the wording of the legislation meant that there was no similar reasonableness placed on the employer to that which parliament had, specifically, put on the worker (also highlighted, above). In particular the appeal tribunal held that parliament had not included a duty on an employer to notify the worker of their right to be accompanied.*

Conclusions

The appeal tribunal recognised the gap in the legislation but considered that such should be a matter for parliament to correct. On a practical level, the gap is obvious. Unless a worker is sufficiently suspicious or quick witted enough to request accompaniment, even during the course of the meeting, then the employer's failure to identify the purpose of it will not be held against them.

For those who engage workers, either directly or via an agency, this case does not change the fact that you do not need to follow a formal process. If you wish to end their services then you can do so without following a formal 'employee-style' process (subject to any contractual terms to the contrary). Be mindful, however, that if you choose to embark on the formality of a process that involves a meeting, then you may trigger the statutory right to accompaniment.

*this is different for employees (not workers) who have sufficient service to claim unfair dismissal. In unfair dismissal claims giving advance notice of disciplinary hearings and the right to be accompanied forms part of the general fairness that a tribunal would expect an employer to have followed.