

# The reason for dismissal and acting within the range of reasonable responses

UPDATE

Update prepared by Carla Benest (Partner, Jersey)

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The Court of Appeal has recently considered the interaction between the employer's reason for dismissal and the importance of an employer acting within the band of reasonable responses.

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In the case of *JT (Jersey) Limited v Mark Wood*, the Jersey and Employment and Discrimination Tribunal (the JEDT) found that Mr Wood had been fairly dismissed on the grounds of capability. Mr Wood however, claimed that the real reason for his dismissal was redundancy and that the process which had been followed in relation to his dismissal was unfair.

Having lost his case in the JEDT, Mr Wood appealed to the Royal Court where an appeal is only available on a question of law. The Royal Court allowed Mr Wood's appeal and remitted his case to the JEDT for a rehearing. Prior to the JEDT rehearing Mr Wood's claim, JT appealed to the Court of Appeal in respect of whether the Royal Court was correct in its findings in relation to errors of law made by the JEDT.

One of JT's main grounds of appeal was that the Royal Court wrongly rejected the JEDT's findings that the real reason for Mr Wood's dismissal was JT's genuine belief relating to Mr Wood's capability. The challenge also related to the Royal Court's conclusion that the JEDT failed to consider whether Mr Wood's dismissal was at least in part due to redundancy. In addition, JT sought to argue that the Royal Court wrongly concluded that a belief could only qualify as a permissible reason for dismissal under the Employment Law if it was reasonably held, with the question of the reasonableness of a belief only being applicable once a tribunal considered whether the belief was fair.

Under the Employment Law, the reason for the dismissal of an employee must be a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee. It would therefore be for JT to demonstrate that the facts believed and acted upon by it amounted to a permissible reason for dismissal. The question to be determined by the Court of Appeal was whether the employer could establish that it had a permissible reason for a dismissal based on genuine beliefs which were nevertheless unreasonable. The Court of Appeal concluded that it did not see any error of law on the part of the JEDT. The issue for the JEDT was whether JT had shown the permissible reason for dismissal and if so whether then the dismissal was fair or unfair by reference to that reason. It would be neither for the employer nor the employee to show reasonableness or unreasonableness; it would be for the JEDT to decide on the fairness of the dismissal based on the employer's reason. There could therefore be instances where a belief was unreasonably held, however, the dismissal would nevertheless be fair by reference to the belief. Accordingly, the Court of Appeal did not see why the JEDT was in error in concluding that redundancy was not the reason (or principal) reason for dismissal. Moreover, the Court of Appeal also stated it was unable to detect any indication in the Royal Court's judgment that the JEDT had conflated the question of whether there was a belief which provided the reason for the dismissal and whether the belief was reasonably held.

One further area of importance concerned the Royal Court's conclusions that the JEDT erred as regards the treatment of the early abandonment of the capability process undertaken in respect of Mr Wood. JT had decided to dismiss Mr Wood prior to the conclusion of the capability process, claiming that it would have been futile to continue with it. The Court of Appeal considered that the correct question for the JEDT

should have been whether JT acted within the range of reasonable actions open to a reasonable employer in taking and acting upon the view that the continuation of the capability process would have been futile, could not have altered the decision to dismiss, and therefore could be dispensed with. This would require a consideration of the fairness of the procedures adopted by the employer in relation to the dismissal. Unfortunately, the JEDT did not consider this question. There was therefore no finding as to whether, at the time of the dismissal, JT acted within the range of reasonable responses open to it when it abandoned the capability process and dismissed Mr Wood. The effect of this error on the part of the JEDT is that it reached a flawed conclusion when deciding that Mr Wood's dismissal was to be considered fair. The Court of Appeal held that the error made by the JEDT was so material that the JEDT's conclusions had to be set aside.

A key principle which is highlighted by this case is that an employer's reason for termination of an employee's employment must be based on genuinely held beliefs if it is to be considered fair. Employers wishing to successfully defend any subsequent unfair dismissal claim must avoid dismissing an individual and seeking to justify the reason for doing so after the event; there must be an established fact or belief known to the employer at the time of dismissal. However, following the reason for termination being established, it is the JEDT's role to decide whether the employer acted within the band of reasonable responses in order to determine whether the dismissal was fair. A genuine, albeit unreasonably held belief may constitute a fair dismissal.

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