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## Drug Testing Dismissals



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An employer was recently found to have fairly dismissed an employee for refusing to take a drugs test. Here, we take a look at why the employer was successful.

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### **What Were The Facts Of The Case?**

The employer in this case, Asda Stores, dismissed an employee for refusing to take a drugs test. The events leading up to the drugs test were quite unique; the employer received an anonymous allegation that the employee had been caught taking drugs in the past and this had been reported in a newspaper. When the employer looked into this, it found that the newspaper reports related to another employee of the employer who had the same name as the claimant; the story did not involve the claimant at all. The claimant had a clean disciplinary record.

The employer explained to the claimant that he was not under suspicion. However, to ensure that it carried out a comprehensive investigation, the employer asked the claimant to voluntarily take part in a drugs test. The claimant refused, and the employer then decided to make the drugs test compulsory. The claimant maintained his refusal and was subsequently dismissed.

### **Why Did The Tribunal Decide It Was A Fair Dismissal?**

The claimant was a manager in the employer's organisation and the Employment Tribunal found that someone in this position should set an example to less senior members of staff by following company policy. The claimant had even used the drug policy to dismiss a member of staff in the past.

The Employment Tribunal found that the dismissal was one which was in the band of reasonable responses; the ultimate test for cases of unfair dismissal. The Employment Tribunal found that "many large employers would have done the same." It also relied on the valid safety concerns that would apply in the employer's workplace – the use of fork lift trucks, for example – and the need to ensure that there is no risk to its employees' health and safety.

### **What Does This Mean For Me?**

Reserving the right to perform drugs tests on employees can be a touchy subject which is not welcomed by employees. However, the employer in this case had a valid reason - health and safety - to include the measure in its documentation and to carry out tests where appropriate. The employer was acting on a tip off – albeit one that wrongly identified the claimant – and wanted to carry out a thorough investigation regardless of the claimant's previously clean record.

This case shows that employers can have a reasonable expectation that its senior managers will follow company rules and procedures in order to set an example to more junior members of staff.

*The content of this briefing is correct at the time of publishing.*

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