

No evidence of right to work meant fair dismissal



An Employment Tribunal has found that an employee was fairly dismissed for failing to produce evidence to show that he had the right to work in the UK, and confirmed that satisfactory procedural steps had been followed. Here, we take a look at what they were.

Employer made immigration status checks

In *Baker v Abellio London Ltd*, the employer undertook an exercise asking employees to provide evidence that they had the legal right to work in the UK. Evidence can be provided in several different ways that are prescribed by the legislation on preventing illegal working. Mr Baker, who was born in Jamaica but had moved to the UK when he was a child, has the 'right of abode' meaning that he can live and work in the UK without restriction. However, his Jamaican passport had expired and he had no other means of proving his right to work.

Employer took appropriate steps

The employer lent the employee money to pay for a new passport and an endorsement within it which would be sufficient as evidence, and warned him that failure to provide this would result in his dismissal. However, the employee obtained a new passport but not an endorsement. The Home Office clarified to the employer that a passport alone, for this particular employee's circumstances, was not sufficient as evidence. The endorsement did not materialise after a further request from the employer, and so the employee was dismissed.

The dismissal was fair

The employee claimed unfair dismissal in an Employment Tribunal but the dismissal was held to be fair. Employers must check that their employees have the right to work in the UK and they do this by asking employees to produce documentation to evidence this. As an employer, you create a statutory excuse to any potential prosecution for breaches of illegal working laws if you can show that you have made checks on documentation. Failure of an employer to provide the documents leaves the employee in a position where they cannot use the statutory excuse. Therefore, the employer had to address this issue.

The Employment Tribunal held that the employer's procedure was thorough. They had:

- Asked the employee to provide documentation;
- Warned him verbally and in writing of the potential for dismissal if he failed to do so;
- Lent him money to obtain the correct documentation;
- Gave him opportunities to obtain evidence;
- Allowed him to appeal.

The Tribunal expressed that this was an unfortunate situation because the employee did have the right to work in the UK, however, could not provide evidence of this. Notwithstanding this, the dismissal was still fair.

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

Summary

- Employers must obtain evidence from ALL employees of their right to work in the UK.
- There is a list of documents issued by the Government which are acceptable as evidence. If a document is not on this list, it cannot be taken as valid evidence.
- If in doubt, the employer should check an employee's immigration status with the Home Office.
- Employees should be warned that their failure to provide evidence will lead to their dismissal.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.