



Fairly dismissing on SOSR grounds

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In association with



Our question today...

‘When is an SOSR dismissal the option to go for?’

What are the dos and don'ts?’

SOSR dismissals?

- “Catch –all” potentially fair reason for dismissal;
- No statutory definition or guidance;
- The reason must be **substantial**.
- AND justify dismissal, not a lesser sanction.
- Potentially problematic – subjective interpretation

The law (1)

- Dismissal for SOSR is a potentially fair reason for dismissal (s.98(1) (b) ERA1996).
- Burden of proof showing that SOSR is the sole/principal reason for the dismissal lies with employer.
- Employers have to act reasonably when dismissing for SOSR (s.98(4) ERA 1996).

The law (2)

- Acas Code of Practice on Disciplinary and Grievance Procedures arguably does not apply to SOSR dismissals. [*Phoenix House Ltd v Stockman and another* UKEAT/0264/15]
- BUT - employer must still be able to demonstrate that a fair procedure was followed.
- Potential overlap - is it important to properly characterise the reason for dismissal where 2 options are available?

No redundancy business reorganisations

- Don't try to disguise a genuine redundancy situation.
- Can be used even if the reorganisation is not essential or crucial to survival of business.
- No requirement for substantial advantage to employer to mitigate consequences of dismissal.
- BUT – employer will need to evidence the business reasons and show these were not trivial.

Changes to Ts and Cs (1)

- Employer can fairly dismiss for refusal to accept detrimental changes
- Do the imposed duties fall within the scope of the employment contract?
- Changes must not be imposed arbitrarily or capriciously but for sound business reason

Changes to Ts and Cs (2)

- Balancing act of respective needs
- Interests of the parties may be irreconcilable, but dismissal still fair in all the circumstances
- Constructive dismissal?

Balancing act factors (1)

- Employer's motives for introducing the changes?
- Employees' reasons for rejecting the m?
- Was reasonable warning of changes given?
- Clear explanation given of changes and effect?
- Impact assessment undertaken?

Balancing Act factors (2)

- Alternatives considered?
- Voluntary agreement to changes sought?
- Reasonable/genuine consultation process?
- Majority acceptance?
- Stance of recognised trade unions?

Protecting employers' interests

Employers entitled to take necessary steps, including SOSR dismissals to protect commercial interests against threats posed by employees' actions.

3 main motivations behind such dismissals are:

- Protecting confidential information
- Restricting competition
- Preventing reputational damage

“They’ve got to go” (1) third party pressure

- Pressure from valued customer/other influential third party can amount to SOSR
- Reason for request largely irrelevant, unless discriminatory, even if untrue
- Importance of third party's continued business to employer and seriousness/certainty of threat will be relevant
- Must however consider injustice to employee and act reasonably

“They’ve got to go” (2) employer insists

...

- “there’s been a breakdown in trust and confidence”
- “he’s just not the right fit”
- “she’s in prison”
- “it’s ok , they’re on a fixed term contract”
- “they came as a team”

Questions?



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