

Does disparate treatment render dismissal unfair?

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An employee's dismissal will not be unfair by reason of a colleague being given disparate treatment if the two employees' circumstances are not truly parallel.

Mr Jones was employed by MBNA from 2006. MBNA held a work event at Chester Race Course in November 2013 to which its

staff, including Mr Jones and another, Mr Battersby, were invited. Both Mr Jones and Mr Battersby had been drinking before and during the event. Mr Jones put his arm around Mr Battersby's sister and, in response, Mr Battersby kned Mr Jones in the leg. Mr Jones then punched Mr Battersby in the face.

Mr Jones went on to a nightclub. Mr Battersby waited outside the club and sent Mr Jones 7 texts which threatened him with physical violence. Mr Battersby did not carry out the threats and nothing further happened between them.

Both men were subjected to investigation and disciplinary hearings. The outcome for Mr Jones was dismissal, whereas Mr Battersby was given a final written warning. Mr Jones brought a claim for unfair dismissal on the basis of the disparity of treatment between him and Mr Battersby.

The Employment Appeal Tribunal found that the disparity of treatment did not render Mr Jones' dismissal unfair. Mr Jones and Mr Battersby were not in truly parallel circumstances. Mr Jones had punched Mr Battersby at a work event at which he had been told that MBNA's disciplinary rules would apply. Mr Battersby's texts were sent outside of work and, though reprehensible, were not acted upon.

In practice, this confirms that employees will not have much success in running the 'disparity in treatment' argument unless they can point to someone accused of exactly the same thing they are or can indicate that it demonstrates an ulterior motive for the dismissal.

MBNA Limited v Jones UKEAT/0120/15

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