Employment relationship was terminated by mutual agreement despite employer stating that the employee had been “dismissed”

In the recent case of Riley v Direct Line Insurance, the EAT held that an Employment Tribunal was entitled to reject an unfair dismissal claim on the basis that the termination of employment came about by the free mutual consent of both parties, despite the fact the employer’s termination letter referred to the “dismissal” of the employee.

What happened in this case?

Mr Riley was employed by Direct Line as a home claims advisor from March 2012. He was disabled by reason of Autism Spectrum Disorder (**ASD**), anxiety and depression. Between 2014 and 2017, Mr Riley was off work primarily due to anxiety and depression. Direct Line made a series of reasonable adjustments to facilitate his return to work. However, these were unsuccessful and, ultimately, a medical assessment indicated that he would never be able to return to work.

In August 2018, Direct Line proposed the option of ceasing employment while continuing to receive benefits under the company’s permanent health insurance (**PHI**) scheme. Mr Riley was happy with the proposal. On 19 September 2018 a final meeting took place to confirm the termination of the

employment relationship. During the meeting, Mr Riley asked to have it put in writing that he was no longer employed. On 25 September 2018, Direct Line wrote to him, stating that he had been *dismissed* with effect from the 19 September 2018 on the grounds of capability due to ill health. As a result, Mr Riley brought various Employment Tribunal claims , including for unfair dismissal and failure to make reasonable adjustments.

The Tribunal dismissed all of Mr Riley's claims. It found that he had not been dismissed but had proactively pursued the option of the PHI scheme and agreed to the termination of his employment to take advantage of it. He had understood the proposal and was not put under pressure to agree, nor tricked into doing so.

On the reasonable adjustments claim, the Tribunal found that Direct Line had failed to make two adjustments, namely, a failure to provide Mr Riley with noise cancelling headphones and a failure to roll out management training on awareness of Asperger's syndrome. However, because Mr Riley was unfit to work from 25 May 2018 , these adjustments would have made no difference to his ability to return to work. Therefore, any claim had to be brought within three months (less one day) of that date, unless it was just and equitable to grant an extension of time, which the Tribunal decided it was not. The fact that Mr Riley had changed his mind about the termination of his employment was not a good enough reason to extend time.

Mr Riley appealed to the EAT.

What was decided?

The EAT dismissed the appeal.

The EAT acknowledged that, on its face, the letter was entirely consistent with a straightforward dismissal letter. However, the Tribunal had correctly considered the substance of the termination, rather than the terminology used in the letter. The decision that the termination was by mutual consent, and that Mr Riley understood the nature of it, was upheld. The EAT clarified that a consensual termination, agreed upon freely by both parties, does *not* constitute a dismissal.

In examining whether the Tribunal had erred in refusing to extend the time limit, the EAT also upheld the decision that Mr Riley's change of heart about the agreement to terminate his employment by mutual consent was not a ground for a just and equitable grounds extension of time.

What does this mean for employers?

This decision highlights that the terminology used in employment documents and agreements can have serious consequences. Here, the incorrect use of the term "dismissal" appears to have triggered the employee to launch Tribunal claims.

However, even where the wrong terminology is used, this decision demonstrates that Tribunals will look at the substance of the termination to assess whether it amounts to a dismissal or a consensual parting of the ways. Where both parties have freely agreed to end the employment relationship, the termination will not be regarded as a dismissal. In this

case, the fact that Direct Line kept detailed records throughout the process was key to them successfully defending the claim. Therefore, confirming with an employee that they fully understand what they are agreeing to and documenting everything in writing will help to prevent misunderstandings and potential disputes down the line.

Being careful of terminology and adopting a considerate approach when dealing with terminations, especially involving employees with disabilities, will mean employers are more likely to achieve legal compliance, reduce the risk of legal disputes, and maintain good employee relations in the process.

Riley v Direct Line Insurance Group Plc

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