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Issue 242

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Whether an employee was fairly dismissed for exceeding working time limits by working two jobs for the same company

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An update on the European and Human Rights Commission (EHRC) draft Services Code of Practice

Was an employee fairly dismissed for exceeding working time limits under the Working Time Regulations by working two jobs for the same company?

Yes, held an Employment Tribunal in the case of *Ogumodede v Churchill Contract Services*, which found that an employee who held two jobs with the same employer was fairly dismissed from one of the jobs, after the employer learned that she was working combined hours in excess of limits under the Working Time Regulations 1998.

Background

The Claimant, Ms Ogumodede, transferred to Churchill Contract Services (the Respondent) under a TUPE transfer from her former employer on 5 March 2018. The Respondent currently employs the Claimant to work as a cleaner at Deutsche Bank's offices for 40 hours per week (8am-5pm Monday to Friday).

The Claimant was also contracted by a third-party contractor to carry out cleaning at Houses of Parliament for 37.5 hours per week (10pm-6am Monday to Friday). On 1 May 2024 the Respondent took over a contract from that contractor to provide cleaning services to the Houses of Parliament. The Claimant's contract for cleaning the Houses of Parliament therefore also transferred to the Respondent.

The Respondent did not know that the Claimant had been carrying out work at the Houses of Parliament before it took over that contract. At that stage the two contracts for two different roles came to the Respondent's attention. The Respondent was concerned at the Claimant's hours which amounted to 17 hours in a 24-hour period with a short 2 hours break between roles in the morning and 5 hours in the evening.

The Respondent suspended the Claimant without pay from 25 July 2024 until it confirmed termination of her Houses of Parliament contract on 28 October 2024.

The Claimant brought claims of:

- Unfair dismissal
- Redundancy pay
- Unlawful deduction from wages – related to unpaid suspension

Law

Under the Working Time regulations 1998 (WTR) working time is limited to a 48-hour average per week, usually assessed over a 17-week period, unless an Opt-Out Agreement is in place.

Additionally, a worker is entitled to:

- A daily rest period of not less than 11 consecutive hours in each 24-hour period during which they work for their employer.
- A weekly rest period of not less than 24 hours' uninterrupted rest in each seven-day period during which they work for their employer or, at the employer's choice, either:
    - Two uninterrupted rest periods of not less than 24 hours in each 14-day period; or
    - One uninterrupted rest period of not less than 48 hours in each 14-day period.
- An eight-hour average limit on a night worker's normal hours of work per 24 hours.
- An eight-hour actual limit for each 24-hour period in the case of work undertaken by a night worker (not necessarily during night-time) involving special hazards or heavy physical or mental strain.

The Claimant's cleaning roles totalled 77.5 hours a week: a 40-hour week in a day shift and a 37.5-hour week in a night shift. These hours breached regulation 6(1) of the Working Time Regulations 1998, which limits night workers to working an average of eight hours in 24 hours. Regulation 6(2) requires employers to take all reasonable steps to ensure compliance in keeping with the need to protect the health and safety of workers.

Decision

The Employment Tribunal held that the Claimant was prevented by the principles of common law and statutory illegality from enforcing the contract. The performance of the contract was in breach of regulation 6(1) of the WTR and contrary to public policy. There was no provision for the parties to opt out from regulation 6(1) and, if the Respondent did not meet its obligations under regulation 6(2), offences might be committed.

It found the Claimant had deliberately concealed the fact that her working hours were in breach of the Working Time Regulations and concluded that her knowing participation in illegally performing the contract, combined with the clear health, safety and public interest considerations behind the restrictions (particularly for night workers), justified rejecting her claims.

Even if she had not been prevented from pursuing her unfair dismissal claim due to the

illegality of performing the contracts, the reason for her dismissal was potentially fair for contravening a statutory restriction under section 98(2)(d) of the

Employment Rights Act 1996 (namely that she could not continue to work in the position which she held without contravention - either by her or by the Respondent - of a duty or restriction imposed by or under an enactment, specifically to adhere to the working time limitations).

The Respondent had also followed a fair procedure, retaining the Claimant in the employment most favourable to her and offering her reduced hours which complied with the WTR in the other role, in an attempt to avoid dismissal.

The Employment Tribunal therefore held that the Claimant was fairly dismissed and also rejected her unlawful deductions from wages and breach of contract claims in respect of her unpaid suspension and summary dismissal.

Comment
In order to show compliance with WTR limits, employers must keep records that are "adequate" to show whether, in respect of each worker, the limits are being complied with, and these records must be retained for two years after employment ends.

This case is a timely reminder to employers to be aware of their obligations, ensure they can show compliance, and take prompt action on discovering non-compliance.

In sectors where employees regularly take on other work, it's also sensible to require them to inform the employer immediately if they have taken or are proposing to take on another role, both to ensure compliance with the WTR and with health and safety obligations.

Christine Jamieson, Senior Paralegal, Employment team

Will minor shortcomings in an employer's disciplinary process render a dismissal unfair?

No, held the Employment Appeal Tribunal (EAT). The case of *Alom v Financial Conduct Authority 2025* held that the dismissal of an employee for misconduct was not unfair despite shortcomings in the process that was followed.

Background
The claimant, Mr Alom, was employed by the Financial Conduct Authority (FCA). Mr Alom had an argument with a female colleague, following which, the colleague received an anonymous email containing harassing and threatening language. Mr Alom's colleague reported the email to the FCA's HR department, who conducted an investigation.

As the email was anonymous, a review of Mr Alom's work emails was carried out as part of the investigation process to determine if there was evidence to confirm that he had sent the email.

The review did not establish who sent the email. However, the context was taken into account, including the content of the email and the recent argument between Mr Alom and his colleague, and it was concluded that, on the balance of probabilities, Mr Alom had sent the anonymous email to his colleague. This formed the first disciplinary allegation against Mr Alom.

Mr Alom sent a further email to his line manager after the investigation (who was also his colleague's line manager), which referred to a recommendation within the investigation report regarding a complaint he had made about his colleague.

This was considered a potential breach of confidentiality and formed the second disciplinary allegation against Mr Alom.

At the disciplinary hearing, both allegations were upheld by the FCA and Mr Alom was therefore found guilty of gross misconduct regarding the first allegation (the anonymous email) and of misconduct for breaching confidentiality in respect of the second allegation. He was summarily dismissed.

Mr Alom brought claims of race discrimination, unfair dismissal, and victimisation against the FCA. The Employment Tribunal (ET) found that the reason for Mr Alom's dismissal was his conduct and dismissed all of his claims.

The ET acknowledged that there had been minor errors in the disciplinary process, but it held that it was reasonable for the FCA to conclude that Mr Alom had sent the anonymous email, and that those minor errors did not render the dismissal unfair.

Thereafter, Mr Alom appealed to the Employment Appeal Tribunal (EAT) and argued that his dismissal was procedurally unfair on the following grounds:

- He was not provided with transcripts of the two investigative interviews conducted with his colleague.
- A script prepared by HR for the line manager at the disciplinary hearing suggested that the line manager was not the genuine decision maker and that the outcome was predetermined.
- The search of his work computer constituted a breach of his right to privacy under Article 8 of the European Convention on Human Rights (ECHR).

EAT Decision
The EAT dismissed Mr Alom's appeal.

Regarding Mr Alom's first ground of appeal, the EAT referenced the ACAS Code, which requires employees to be provided with "sufficient" information about the alleged misconduct to enable them to respond.

The EAT considered that the disciplinary allegations concerned the first and second emails, both of which had been provided to Mr Alom. This was deemed sufficient, and the provision of interview transcripts was considered unnecessary.

In respect of the second ground of appeal, the EAT recognised that it was "inappropriate" for the script to express a particular view of the email that the decision maker should put forward. However, the EAT found that the overall script "did not presume any particular outcome of the process", and that it allowed for Mr Alom's response during the hearing to be invited.

The EAT was satisfied that the disciplinary chair had come to his decision only after hearing from Mr Alom.

For the third ground of appeal, the EAT accepted this argument but found it to be a moot point because the report which resulted from the search of the computer was not relied upon in the decision to dismiss. Therefore, it could not affect the fairness of the dismissal.

Comment
Although the FCA succeeded in this case, it serves as a reminder of the importance of carefully considering how much documentation to provide to an employee facing disciplinary proceedings. As a general principle, the employee should receive the same documentation reviewed by the decision-maker when determining the outcome.

However, if this is not possible, employers should ensure that the employee has been given sufficient evidence relating to the allegations in line with the ACAS Code of Practice.

Employers should also be aware that scripts should be limited to guiding the process and ensuring consistency and should not influence or predetermine the substance of the decision.

Carla Codona, Solicitor, Employment team

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Update on the European and Human Rights Commission (EHRC) draft Services Code of Practice following the case of For Women Scotland Ltd v The Scottish Ministers 2025

The EHRC has written to the Government to emphasise the need to implement the updated draft Code of Practices for services, public functions and associations. The draft Code was sent to the government on 4 September 2025.

The EHRC has also asked for the revocation of the 2011 version of the Code, as it is now out of date and inconsistent with the law following the case of For Women Scotland v Scottish Ministers earlier this year, which found that the definition of sex in the Equality Act 2010 (the Act) should be interpreted as 'biological sex' only.

Given the above, the EHRC has removed the interim guidance from their website and has encouraged those who require guidance to seek specialist legal advice on their obligations under relevant legislation, and to await the implementation of the new Code when it is approved by Parliament.

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