

Wrongful dismissal - how not to go wrong: Cameron v East Coast Main Line Company Limited UKEAT/0212/19/BA

By [Mark Green](#)

3PB Barristers

First Instance ET Decision

1. In *Cameron v East Coast Main Line Company Limited* UKEAT/0212/19/BA,¹ the EAT dealt with the question of whether length of service is a relevant consideration when asking whether a dismissal is wrongful.
2. Mr Cameron had been accused of negligence in authorising the departure of a train when a colleague was close to the track, resulting in a significant safety incident. It was said that he had not completed adequate safety checks. Mr Cameron argued that the colleague himself had not followed the correct procedures such that Mr Cameron could not have known he was near the track, if indeed he was. His claims for unfair dismissal, discrimination and wrongful dismissal failed.

First EAT Hearing

3. In an earlier EAT case before HHJ Stacey, the finding on wrongful dismissal was successfully appealed on the basis that the Employment Tribunal did not direct itself to the correct legal principles on wrongful dismissal, nor did it make the findings of fact necessary to reach a conclusion on the question of wrongful dismissal – i.e. whether, as a matter of fact and on the balance of probabilities, the Claimant had committed a repudiatory breach of contract.

Remission to the ET

4. The case was remitted to the Employment Tribunal, which decided that there had in fact been a wrongful dismissal. It held that the Claimant's extremely long (35 year) service

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https://assets.publishing.service.gov.uk/media/5eb92c9bd3bf7f5d3c74a2d2/East_Coast_Main_Line_Company_Limited_v_Mr_J_Cameron_UKEAT_0212_19_BA.pdf,

was to be held in his favour in deciding whether his conduct had undermined the implied term of mutual trust and confidence, and that it was a one-off decision made in confused circumstances.

Second EAT Hearing

5. The Respondent appealed.
6. HHJ Naomi Ellenbogen QC held that length of service had no bearing on the question of how serious the breach of contract was. She also held that, even if she was wrong about that, it had been perverse of the Employment Tribunal to hold Mr Cameron's length of service in his favour. Rather, that fact should have been held against him, given that the Employment Tribunal itself found that Mr Cameron's long history in the role should have given him the expertise and experience to carry out the role to the required standard.
7. The EAT also found that given the facts, it had been perverse to find that there had been a wrongful dismissal, given how potentially catastrophic the incident could have been and the fact that the Claimant had failed to accept he had done something wrong. In doing so, it referred to the principles set out in *Adesokan v Sainsbury's Supermarkets* [2017] ICR 590, CA (paras 21, 23-24 and 27).
8. In short these are that:
 - i) A Tribunal must ask itself whether the misconduct can properly be described as 'gross'. This is a question of fact.
 - ii) The focus is on the damage to the relationship between the parties.
 - iii) Dishonesty and other deliberate actions which poison the relationship will obviously fall into the gross misconduct category, but so in an appropriate case can an act of gross negligence.
 - iv) In negligence cases, the key is whether the negligent dereliction of duty is "so grave and weighty" as to amount to a justification for summary dismissal.
 - v) The fact that there was no harm caused by the negligence is not a mitigating factor.
9. The EAT therefore substituted its own view and dismissed the claim for wrongful dismissal.

Analysis

10. The key lessons to take from this case are:

- i) Although length of service is a factor in considering whether a dismissal is unfair, it should not be taken into account when considering wrongful dismissal.
- ii) Length of service can in any event be a double-edged sword, as decades of service can also be held against a Claimant with a 'he should have known better' argument.
- iii) It is important to ensure that Tribunals deal with wrongful dismissal separately from unfair dismissal, to avoid an appeal that may cause time and cost and result in the same outcome.
- iv) The question of contrition (and therefore whether the conduct may be repeated) is a key factor in deciding whether summary dismissal was justified.
- v) If an employee is to be dismissed without notice for negligence, the negligence must be so 'grave and weighty' that it justifies summary dismissal. It is immaterial whether harm was actually caused, the focus is on what might have happened.

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Mark Green

Barrister
3PB

0330 332 2633

mark.green@3pb.co.uk

3pb.co.uk