



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Christian

**Respondent:** International Automobile Components Group Limited

**Heard at:** Liverpool

**On:** 9 November 2018

**Before:** Employment Judge Buzzard

## REPRESENTATION:

**Claimant:** Mr K Christian (Claimant's Father)

**Respondent:** Miss R Eeley, Counsel

# JUDGMENT ON PRELIMINARY HEARING

The claimant's only claim of unfair dismissal is struck out on the basis it has no reasonable prospect of success.

## REASONS

1. The claimant claims that he was unfairly dismissed at the conclusion of a disciplinary process. The disciplinary process followed a drugs test conducted on the claimant on 5 February 2018. The drugs test result was positive for cocaine.
2. There is very little, if any, dispute between the parties regarding what occurred, either during the drugs testing process or during the subsequent disciplinary process and appeal.
3. The claimant's only basis for arguing that his dismissal was unfair is that the respondent failed to follow the drugs testing process properly. Specifically the claimant argues that errors in the process followed could have resulted in cross contamination of the samples taken. Whilst the respondent's witnesses do not appear to agree with each other regarding the exact events during the collection of the sample, which is at the core of the claimant's concerns, the respondent during

the disciplinary process proceeded on the basis that the claimant's account of events was accurate.

4. The claimant's assertion is that during the sample collection he, on a number of occasions, touched the sponge with which he was seeking to obtain a specimen of his own saliva. This was done because he was attempting to ascertain how wet the sponge had become, and consequently whether sufficient saliva had been collected. It is the claimant's position that he did so with unwashed un-gloved hands. Accordingly, had he come into contact with cocaine on surfaces within the workplace this would then have contaminated the collection swab.

5. The parties appear to agree that the claimant's workplace was one in which cocaine had been previously found. On this basis the potential of the claimant coming into contact with cocaine was not negligible.

6. Following the claimant's dismissal, and prior to the claimant's appeal against his dismissal, the respondent sought clarification from their own testing experts regarding the potential that any such contamination could give a false positive result. The respondent was informed that the test conducted was both for cocaine and for enzymes which are created by the metabolisation of cocaine. The respondent was informed that the test for both the enzymes and cocaine were positive. The expert prepared a report confirming that in their view it was very unlikely that, if an individual undertaking a test had touched the swab prior to insertion in their mouth and thereby ingested cocaine, there would be sufficient metabolisation of that cocaine to give a positive test result. This conclusion was reached taking into account the threshold levels of enzymes that are required to give a positive test result.

7. The claimant was made aware that the respondent had sought this clarification from the testing experts. This was given an appeal outcome letter, relating to a grievance he had submitted. This was sent to the claimant's representative, Mr K Christian (who is the claimant's father), on 27 April 2018.

8. The claimant's disciplinary appeal took place on 17 May 2018. At that disciplinary appeal the claimant's concerns regarding the testing regime were fully considered. The respondent concluded, in the light of the positive test results and the information provided by the experts in relation to test results, that the most likely reason for the positive test result was that the claimant had ingested cocaine.

9. To establish that the claimant's dismissal was unfair the claimant would have to establish that the respondent had either followed an unfair disciplinary procedure and/or the decision to dismiss was outwith the range of reasonable responses. The claimant does not seek to assert that dismissal of employees found to have tested positive for ingestion of cocaine is outside the range of reasonable responses. The claimant did not assert that there was a flaw in the disciplinary process in terms of timings, meetings or representation. The claimant's only ground for challenging the fairness of his dismissal was that the respondent had given insufficient weight to the possibility that the test had been contaminated resulting in a false positive test outcome.

10. The respondent accepts that the test would not have been sufficiently rigorous to meet the threshold for a criminal sanction, namely, proof beyond all reasonable doubt. However, given that the claimant had failed the test, both samples giving

positive test results, and the expert opinion they had obtained suggesting that the chances of cross contamination causing a false positive were very low, the respondent's conclusion that the most likely reason for the positive test results was that the claimant had ingested cocaine deliberately was one which it is difficult to see could be criticised as unavailable to a reasonable employer.

11. On this basis it did not appear that the claimant has any reasonable prospect of arguing that the respondent's decision that he had ingested cocaine, and subsequent dismissal, were unfair.

---

Employment Judge Buzzard

Date \_\_\_\_\_ 21 November 2018 \_\_\_\_\_

JUDGMENT AND REASONS SENT TO THE PARTIES ON

26 November 2018

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.