



## The Problem of Ambiguous Dismissals

---

**Tom Wood**

**Barrister**

**St John's Buildings**

### **The Problem of Ambiguous Dismissals**

In most unfair dismissal cases, the focus for the employment tribunal is on fairness. There will often be a letter of dismissal setting out an employer's reason and rationale, and the tribunal will assess whether that decision was within the range of reasonable responses.

However, occasionally, it is in dispute that an employee has been dismissed. I have recently been involved in a number of such cases. They are not necessarily straightforward, and it is important that both parties to the dispute set out their positions accurately.

The world of employment is not black and white. Employers and employees are only human, they react unpredictably to situations and they do not behave straightforwardly just to ensure that lawyers can handle their employment tribunal case easily. Arguments in a workplace are not rare, and, particularly in smaller businesses where the employer can be 'one of the team', a more informal approach can be taken to what might be regarded as minor misconduct. That informal approach can often leave an employee believing that they have been dismissed, when in fact that was not what was intended.

The problem begins with the language used. Words that are intended one way can easily be interpreted in another way. For example, one can easily see how this would be the case if an employer says, 'get out', or 'you're finished' (or anything other than 'you are dismissed'). Unfortunately, for either claimant or respondent, what they consider the words mean is irrelevant. In the same way that a court or tribunal will interpret a written document, the tribunal will seek to determine, *objectively*, what the speaker intended.

Since the words could point both towards and away from a dismissal, the facts leading to those words, and those that follow, will be all-important. There might be, for example, a letter of appeal that is not met with a response that there had been no dismissal. There might have been a prior 'informal warning' that could lead one to consider that a dismissal had, at the later stage, been intended. There are countless potential factors.

Sometimes the words used are not ambiguous, but the tribunal must examine the context in which those words are spoken. The context often referred to is the 'heat of the moment' – where an employer tells his or her employee 'you're fired' during an argument. Realistically, the question is the same as with ambiguous language: whether it is a reasonable interpretation that dismissal was actually intended. Again, all the circumstances must be considered.

It is therefore helpful, when a case of this type is pleaded, not to state that dismissal took place (claimant), or is denied (respondent), but to recognise the test that the tribunal will apply and to set out the facts that support either position. Either party should set out the words used, state whether it is accepted that those words are ambiguous (if they are), but that it is reasonable to interpret them as dismissal in view of facts 'x', 'y', and 'z'. Otherwise, the parties should set out whether they consider the 'heat of the moment' applied and set out reasons that the words can be taken at face value. A clear pleading can influence the tribunal before the evidence is heard.

**TOM WOOD, St. John's Buildings**