

How should an employer respond to a 'heat of the moment' resignation?

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Employers should remember that a 'heat of the moment' resignation should be treated differently from those that come in the usual course of business. They are often verbal and unexpected and usually follow a workplace disagreement. To do otherwise may expose the business to the risk of an unfair dismissal claim.

In the usual course of business, an employee who has properly given notice of termination has no right to withdraw it unilaterally. But why should a 'heat of the moment' resignation be different?

A [case before the Employment Appeal Tribunal](#) (EAT) has provided some useful guidance on the matter.

In February 2020, Mr Omar resigned from his employment 'in the heat of the moment' during an altercation with his line manager. On the same day, in a later meeting, he asserted that his employer's CEO recognised that he wished to continue in employment and asked him to consider the offer of an alternative role. At a meeting a few days later, the CEO told Mr Omar that his line manager had decided she did not want to work with him, so his resignation would stand. His employer asked him to confirm his resignation in writing, which he said he would do. Rather than confirming his resignation, Mr Omar sought to retract it. In earlier disputes, Mr Omar verbally resigned from Epping Forest District Citizens Advice (EFDCA) twice. EFDCA refused to accept the retraction and treated his employment as terminating on one month's notice. Mr Omar subsequently brought claims for unfair dismissal and wrongful dismissal.

His case was that he had not resigned, and there was a 'special circumstance exception' preventing EFDCA from relying on his verbal resignation, which he made in the heat of the moment. In Mr Omar's case, because his

resignation was ineffective, he had, therefore, been dismissed.

Whilst the Employment Tribunal found that Mr Omar had resigned, the EAT disagreed and remitted the case to a new re-hearing, commenting that it was a 'finely balanced case'. In doing so, the EAT gave the following guidance:

- A 'special circumstances' exception does not really exist. What is crucial is whether the resignation was properly given and really intended in the first place, and this will apply to all resignations,
- Where a reasonable employer stands in the shoes of the employer, would that employer feel that the resignation was 'seriously meant', 'really intended' or 'conscious and rational'?
- Where notice of dismissal or resignation is properly given, it can only be retracted with the other party's agreement.

This recent case adds nothing new to the law on resignations and dismissals made in the heat of the moment. Still, it does provide some helpful analysis. Tribunals will likely use it as a reference tool in future cases. The crux will focus on whether the employee 'really intended' to resign, viewed from the perspective of a reasonable employer at the time the employee actually spoke the words. The purpose is not for the law to allow for a change of mind. It will only be in cases where the employee did not intend to resign that the resignation will not be effective.

When an employee gives notice calmly and arguably ordinarily, it will usually be safe for employers to treat it ordinarily. When an employee utters their words in a heated situation or following a conflict, we advise employers to reflect carefully and take the time to assess

whether it is reasonable to rely on the resignation. All those involved must make detailed notes of what was said at the time and by whom.

The EAT has cited several examples of cases where dismissals or resignations were effective despite the giver of the notice being angry, stressed, depressed, or mistaken about the other parties' wishes. This emphasises that each case really does depend on its facts and the circumstances known to the parties at the time.

This case should serve as a salient reminder to employers to treat any workplace dispute with care and seek out timely legal advice at an early stage.

For advice on employment law issues arising in business contact [Karen Cole](#) today.

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