



Case No: CA-2023-001757

IN THE COURT OF APPEAL
CIVIL DIVISION

Neutral Citation Number [2024] EWCA Civ 410

Royal Courts of Justice
Strand,
London,
WC2A 2LL

Date: 13th March 2024
Start Time: 11.56 Finish Time: 12.00

Before:

LORD JUSTICE LEWISON

LADY JUSTICE ELISABETH LAING

Between:

OFSTED

Applicant

- and -

ANDREW HEWSTON

Respondent

ANDREW ALLEN KC and PAUL LIVINGSTON (instructed by DAC Beachcroft) for the Applicant
TOM KIRK (instructed by Thompsons) for the Respondent

APPROVED JUDGMENT

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LORD JUSTICE LEWISON:

1. This is an application for permission to appeal against the decision of the Employment Tribunal which itself overturned the decision of the Employment Tribunal and decided for itself that the respondent had been unfairly dismissed from his position as an Inspector.
2. There are three grounds of appeal. The first relates to whether the EAT was entitled to conclude that the ET was wrong in saying that dismissal fell within the band of reasonable responses. The second ground relates to alleged procedural defects in the investigation and disciplinary proceedings which led to the dismissal, and the third ground is that the EAT was wrong in deciding for itself whether the dismissal was unfair, rather than remitting that question to the ET.
3. As I have said, this is an application for permission to appeal. Our task is not to decide whether the appeal will or will not succeed, our task is simply to decide whether the appeal has a real prospect of success. Having heard short submissions from Mr Allen, King's Counsel, and Mr Kirk, we have come to the conclusion that on all three grounds there is a real prospect of success and consequently we grant permission to appeal on all three grounds.

LORD JUSTICE LEWISON: Gentlemen, what about a time estimate? A day?

MR ALLEN: I think a day would be sufficient and a day would also be necessary, given the number of different grounds.

MR KIRK: I agree.

LORD JUSTICE LEWISON: You agree, Mr Kirk. Would you please draft an order recording the grant of permission, recording your agreement about costs and with a time estimate of one day. Do I need to give any further directions about the conduct of the appeal?

MR ALLEN: Not from my perspective, my Lord.

MR KIRK: My Lord, no.

LORD JUSTICE LEWISON: I think I will say then three LJs and it might be as well to say at least one with Employment experience.

MR KIRK: My Lord, thank you.

MR ALLEN: My Lord, do you wish me to record that in the order?

LORD JUSTICE LEWISON: Yes please. When we grant permission on paper we are always asked whether there needs to be any special expertise on the constitution. I think this is one of those cases where it would help.

MR ALLEN: I think so, yes.

LORD JUSTICE LEWISON: Thank you both very much.

(This Judgment has been approved by the Judges.)

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