## Ajaj v Metroline West Ltd (EAT)

The Claimant, a bus driver, was dismissed summarily after 10 years' service as a result of 3 allegations being upheld - that the Claimant had made a false claim for sick pay; secondly, that he had misrepresented his ability to attend work; and thirdly, that he had made a false claim of an injury at work.

According to the EAT, an employee who "pulls a sickie" is "*representing that he is unable to attend work by reason of sickness. If that person is not sick, that seems to me to amount to dishonesty and to a fundamental breach of the trust and confidence that is at the heart of the employer/employee relationship…the only conclusion available in light of the Tribunal's findings was that the Claimant was guilty of serious misconduct that did amount to a fundamental breach of contract."*

This case is clear authority that (absent any exceptional extenuating circumstances) dismissing an employee summarily for "pulling a sickie" is likely to be a fair dismissal.

## Pendleton v Derbyshire County Council and another (EAT)

The Claimant was a Christian Teacher who was dismissed because her husband, a teacher at another school, was convicted of making indecent images of children and sentenced to 10 months in prison and she refused to divorce him because of her religious belief that her *"marriage vow was sacrosanct, having been made to God and being an expression of her religious faith".*

The claim failed before the Tribunal on the basis that the Claimant was not subject to a particular disadvantage because of her religious belied. The Tribunal took the view that any employee who refused to divorce their husband in such circumstances would have been dismissed irrespective of their religious beliefs. The EAT reversed this decision, finding that a person holding the Claimant's belief would have a particular difficulty in choosing to divorce her husband to save her job.

The Respondent tried to objectively justify the discrimination. It made out a legitimate aim (safeguarding children), but failed to establish proportionality as it adduced no evidence on this point.

When trying to justify discrimination, Respondents should consider alternative ways of achieving the legitimate aim and keep a contemporaneous record of that consideration.

## Grange v Abellio London Ltd (EAT)

The Respondent started work as a bus driver with an 8.5 hour shift with a 30 minute lunch break, which he was able to take. He changed roles to a Relief Roadside Controller, a role in which the Respondent recognised it was more difficult to take a 30 minute break and therefore his hours were reduced to 8 hours per day so the break would effectively be taken by way of finishing half an hour earlier.

The Claimant did not request a break, but later raised a grievance complaining of being unable to take a 20 minute rest break as required by the WTR.

The EAT held that a worker cannot be required to take their rest breaks, but employers must proactively ensure that arrangements are put in place that allow workers to take their breaks

if they wish. A request by the employee and a refusal by the employer is not needed for the employer to be in breach of the WTR.

## G4S Cash Solutions (UK) Ltd v Powell (EAT)

The Claimant was an engineer who developed a back problem that amounted to a disability. He was given a role as a "Key Runner" delivering parts to engineers. A year or so later, the Respondent wanted to reduce the Claimant's pay by £200 per month as the Key Runner role did not require engineering skills. The Claimant refused to agree and was dismissed.

The EAT held that the dismissal was discriminatory and the Respondent should have *"continued an arrangement which had already been in place for nearly a year and which it had led the Claimant to expect to be long-term."*

Although fact sensitive, this cases means that offering pay protection can amount to a reasonable adjustment. The decision may have been different if the Respondent was smaller and/or the employee hadn't been left on the engineer rate of pay for over a year before the attempt to reduce it.

If offering pay protection as a reasonable adjustment, employers should make it clear to employees that the pay protection is a temporary measure that will be withdrawn or phased out after an agreed period.

## Phoenix House Ltd v Stockman and another (EAT)

The ET held that ACAS COP1 on Discipline and Grievances does not apply to SOSR dismissals. The EAT disagreed. It held that the code does not state explicitly that it applies to SOSR dismissals and it only applies to types of dismissals listed in the code.

The code states that it applies to misconduct and poor performance dismissals (and grievances).

## Snell v Network Rail (ET)

Mr Snell wanted to take SPL. He would have been paid at the statutory rate. Mrs Snell would have received 26 weeks' full pay (as would primary adopters, but not fathers or secondary adopters). Mr Snell raised a grievance, which was rejected as was his grievance appeal.

Mr Snell brought direct and indirect sex discrimination claims but later dropped the direct discrimination claim. Network Rail chose not to defend the indirect discrimination claim.

Network Rail was ordered to pay a c. £28k award for indirect sex discrimination including c. £16k for the difference between statutory shared parental pay and full pay and £6k injury to feelings. The rest of the award was made up of pension loss, an uplift, interest, and ET fees.

Although this is only an ET decision and therefore not strictly binding on other ETs, it's the first indication of judicial thinking on this much-debated point.