



Lorry driver fairly dismissed for not wearing a face mask - lessons for employers

By **Sanika Karandikar** - 31 March 2021

The Employment Tribunal held in the case of **Deimantas Kubilius v Kent Foods Ltd**, that a delivery driver was fairly dismissed for refusing to wear a mask on a client site, which was in breach of the health and safety obligations in the employee handbook. An altogether unsurprising judgement considering the circumstances in which the dismissal arose but nevertheless a relief and good news for employers.

In short, the facts of the incident are as follows:

- Mr Kubilius was a delivery driver for Kent Foods;
- 90% of work from the site involved travel to and from Tate & Lyle’s Thames refinery site;
- When Mr Kubilius arrived at Tate & Lyle’s site in March 2020 he was asked on two occasions by Tate & Lyle staff to wear his mask whilst he was sat in the cab of his lorry;
- Mr Kubilius refused, claiming he was in his own personal space and that wearing a mask was not a legal requirement, which, in those confusing early days of the pandemic, it was not.

Tate & Lyle banned Mr Kubilius from their site and an investigation and disciplinary process followed. Tate & Lyle were not willing to reverse Mr Kubilius’s site ban, which put Kent Foods in a sticky situation considering Tate & Lyle was the main customer for this depot. Mr Kubilius was summarily dismissed on the grounds of his gross misconduct and subsequently brought a claim in the Employment Tribunal for unfair dismissal.

Finding that the dismissal was fair, the Tribunal took the following into account:

- Kent Food’s employee handbook explicitly said that employees should follow ‘customer instruction in relation to PPE’, required that ‘employees take all reasonable steps to safeguard own health and safety and that of others as a result of their actions’ and that the ‘company’s success is built upon its relationship with its clients and suppliers’;

- Mr Kubilius showed no remorse for his actions, insisting he had done nothing wrong;
- There was not much other work to do out of the Basildon site and redeploying Mr Kubilius would have been difficult;
- 'Third party pressure' (i.e. the site ban) could potentially be a fair reason for dismissal – but decided, on the facts, that Mr Kubilius had been dismissed for conduct reasons.

This case is perhaps limited to these facts, as the third party pressure from Tate & Lyle made dismissal the only viable option for Kent Foods. The Tribunal opined that a different employer may have chosen to issue a written warning but found that Kent Foods' decision fell within the 'reasonable range of responses'.

Here are some key takeaways:

- There is great value in keeping health and safety obligations (for both the employer and employee) in a handbook up to date – and the consequences of non-compliance;
- Client relationships are of high importance in certain sectors and 'third party pressure' could be a consideration in finding a dismissal was fair.

Although this judgement will not be binding on other Employment Tribunals, it may be persuasive on future judgements. Nevertheless, it is a helpful case to have at your disposal.

If you would like to discuss the implications of this case further please get in touch with [Sanika Karandikar](#) or your usual GQ|Littler lawyer.