

# CASE STUDY TWO

## 'LAURA': THE EFFECT OF FEES UPON THE EMPLOYMENT TRIBUNAL PROCESS

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Laura worked for a retail company for six years before she was suspended over an alleged incident which she denied, providing evidence to support her innocence. However, when she learned that there was a fee to be paid for submitting a claim, and for holding a hearing, this was a 'gamble' she felt unable to take.

### The story

Laura worked in a large supermarket chain for more than six years. A store security guard filmed Laura on CCTV going to her car during her break. He claimed she was taking illegal drugs. Laura states that she was taking a hay fever remedy. After returning to work from being in her car, Laura was approached by a manager and informed that she was suspended. She asked the reason for this and was told it was due to the incident that happened earlier in the evening. At the time, Laura did not know what incident was being referred to. The next day she

received a letter from her employer informing her that she had been suspended because she was working under the influence of illegal drugs.

Laura vehemently denied she had been taking illegal drugs. She contacted her employer and offered to have a drug test taken immediately, as it was still within the appropriate time period that would make this valid. The employer declined her offer. Laura then had her own test taken, which showed that she had not been under the influence of illegal drugs. Laura had a disciplinary meeting. Laura was not a member of a union. In line with its own policy, the employer provided two staff representatives to attend the meeting with Laura. These representatives were not union representatives, and Laura felt that they had insufficient training on store procedure or employment law. One of the representatives indicated to Laura that the matter was above her head and that she did not have a clue how to help fight it for her. Laura offered her drug test results to prove her innocence. The manager informed her that they did not need any further proof as their evidence on the matter showed “beyond reasonable doubt” that she was taking illegal drugs. Laura was fired from her job. She appealed this decision, but the employer upheld it, saying that her dismissal was justified.

In her first meeting at the CAB, Laura felt confident that she had a strong case. She had studied the employer’s disciplinary and dismissal procedures and had identified numerous breaches of procedure by her manager. She had arranged for a trade union rep to come with her to the appeal meeting, who was very encouraging, telling her:

‘I’d have thought that’d help and when we come out of the meeting he says, “Laura, that couldn’t have gone any better, that meeting”, because I pointed out all the wrongs that they’d done. I’d done everything I could to prove that they were wrong and he says “That couldn’t have gone any better”. He says, “So I hope, like, you do well in it”, and they wrote to me and said, “No, sorry, we’re sticking with the thingy, dismissal”.’

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As matters progressed Laura became significantly more downcast and pessimistic about her prospect of successfully challenging her dismissal. She had learnt that she would need to pay ET fees of £250 to lodge a claim and then a further £950 to have her claim heard. She was not eligible for remission because she was in receipt of contribution-based Employment and Support Allowance. Laura felt that there was nothing more she could do to deal with the situation because she could not afford to pay the fees:

At the end of the day ... I could've won and I might not have done. I haven't got £1100 to pay on something I might not win. ... I'm on my own with two children without a job at the moment ... If I knew I could claim my money back ... even if I lost, at least I've got that money back, I would've been okay, you know, I would've been a bit gutted but I would've been all right. But I can't afford to pay over £1000 for something which is a gamble. I might as well just go to the bookies.

Laura had contacted various lawyers to see if she might get not only representation but someone who might front the tribunal fees. A solicitor who was already a personal contact told her:

“I'm willing to give you advice”, [Laura], she says, “but all I can do is basically” ... she charged £190 an hour, that solicitor I saw, and she said, “Even if you won, you'd probably owe it all to me by the time we got to court anyway”. So there's no point going down that route either.

Laura felt aggrieved. She had wanted to fight her case, but felt that she was denied the opportunity to do so. Laura had been advised by Acas, the solicitors and union representatives with whom she had consulted that she had a strong legal case for unfair dismissal. She had made many efforts to prove her innocence and fight for her cause, but felt that the power was firmly on the side of her employer and that she could not do anything about this. She had undertaken research and sought

advice about her employer's human resources policies and relevant employment law, she had put a number of written questions to her employer in her appeal hearing but the employer's written response simply ignored many of these. She had also looked up regulation relating to workplace use of CCTV and had lodged a complaint with the Surveillance Camera Commissioner. However, the reality of her situation was that she was struggling financially and still without a job. She had applied for a number of positions, but was finding it virtually impossible to obtain work because she now no longer had a clean employment record. Indeed, Laura did not even know the detail of what her previous employment record stated.

A family member suggested that she obtain copies of her file from her former employer, "to see what exactly they're gonna put on me ... you know, if a new job rang for me, for a reference, I want to see what's on my personnel files, to be honest, to see what they're putting on there". Laura was preparing to do so at last contact with the research project.

Ultimately, it seemed that there was little she could do now, and she felt deprived of access to justice:

I'm gutted because I wanted to fight 'em ... They were wrong in what they did. They didn't give you any chance to prove your own innocence ... it's all just a big, massive cover up and there's not a single thing I can do about it ... I can't clear my name and I'm struggling getting a job at the moment.