

'Difficult' Employee May Be Dismissed For A Potentially Fair Reason

March 2008



Court of Appeal states that a 'difficult' employee may be dismissed for a potentially fair reason.

The Court of Appeal in England and Wales has confirmed that an Employer had acted reasonably in dismissing a "difficult" Senior Employee on the ground of "some other substantial reason" and "conduct". However, by reason that the Chairman of the Disciplinary Panel had displayed bias the dismissal had been procedurally unfair. Nevertheless the Employment Tribunal had been entitled to find that there was a 100% chance that the Employee would have been dismissed had a correct procedure been followed, and was thus entitled to reduce the compensation to nil.

The case concerned a Director of Finance who had been employed by a NHS Trust since 1986. As Director of Finance he was required to manage a group of employees underneath him and to co-operate with senior colleagues at the same level or above. The job also involved establishing and maintaining relationships with external advisors and agencies. Whilst there was never any criticism of his technical competence, many of those with whom he had dealings experienced difficulty with his manner and management style.

In July 2002 the Chairman of the Trust decided that the situation had become so serious that she wanted an "exit strategy" in place for him by the end of the month. On 29 July, without prior warning, the Director of Finance was summoned to a meeting with the Chief Executive and asked to resign with immediate effect. When he declined to do so the Employer set the disciplinary procedure in motion. At the Disciplinary Hearing, which was chaired by the Chairman of the Trust, evidence was heard from a number of the Director's colleagues to the effect that they found him stubborn and intimidating and felt that he did not contribute constructively to finding solutions to problems. Also, during the course of the hearing, the Director of Finance made serious allegations against the Chief Executive, attacking his honesty and integrity. He also accused other witnesses of lying. He was dismissed by the Trust primarily because his style of management was having a serious adverse effect on the proper running of the Trust.

The Court of Appeal decided that, although "personality" of itself could not be a ground for dismissal, an employee's personality may manifest itself in such a way as to enable an Employer to dismiss for a potentially fair reason. A breakdown in confidence between an Employer and a Senior Executive for which the latter is responsible and which actually, or potentially, damaged the operation of the Employer's organisation, or which rendered it impossible for Senior Executives to work together as a team, can amount to "some other substantial reason for dismissal", a potentially fair reason for dismissal. Provided the Employer also follows a fair procedure, it is possible for an Employer to dismiss an employee fairly in such circumstances.

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