BRIEFING

Case Update

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December 2019

Employees recording meetings – is it misconduct?

The employee in this case worked in the finance department of a charity. She complained to the Head of Finance about her treatment by the Finance Director. When the Head of Finance and Finance Director met to discuss the complaint, the employee interrupted the meeting and refused to leave when asked. She was subsequently invited to a meeting with HR, which she secretly recorded. A disciplinary process then followed in relation to the employee's conduct at the earlier meeting and the employee was given a formal written warning. She also raised a grievance citing various issues with management which was rejected. Following a period of sickness absence and an unsuccessful mediation, the employee was dismissed due to an irretrievable breakdown in working relationships.

The employee brought an unfair dismissal claim and won. It only emerged during the hearing that the employee had secretly recorded the initial conversation with HR. The employer argued that had it known about the recording, it would have dismissed the employee for gross misconduct and therefore she should not receive any compensation for her dismissal. The Employment Tribunal ruled that there was a ten percent chance the employee would have been dismissed fairly had the employer known about the secret recording and so reduced the employee's compensation by ten percent. On appeal, the Employment Appeal Tribunal agreed and said that secretly recording meetings will usually constitute misconduct but not necessarily gross misconduct.

It is relatively easy for employees to record meetings secretly nowadays given the technology available on mobile phones. However, as this case shows, recording a meeting without telling the employer will usually amount to misconduct. Whether or not this could also amount to gross misconduct will depend on the circumstances, including the employee's reason for making the recording, what is ultimately recorded, any damage done to the employer by the recording and the employer's attitude to the recording. Employers should consider stating in their policies that recording of meetings without the knowledge or consent of those involved constitutes misconduct and, in some circumstances, may amount to gross misconduct. Practically, managers conducting disciplinary or grievance meetings may wish to confirm at the outset that no recording is being made and should also generally leave the room to conduct their deliberations to avoid these being recorded secretly.

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