

Handling misconduct investigations and conflicting evidence

The recent Court of Appeal decision in the case of *Salford NHS Trust v Roldan* highlights the importance of handling disciplinary investigations and conflicting evidence carefully.

The case

Ms Roldan was employed as a nurse and had worked for Salford NHS Trust for over four years when she was dismissed for gross misconduct following a complaint from a colleague that she had mistreated a patient. She brought claims of unfair dismissal and race discrimination against the Trust. The Employment Tribunal found in her favour in relation to the claim of unfair dismissal on the basis that the investigation was procedurally unfair and awarded her over £20,000 in compensation. The Trust appealed and was successful in getting the decision overturned by the Employment Appeal Tribunal. Ms Roldan then appealed and the Court of Appeal re-instated the original decision of the Employment Tribunal.

Amongst the key issues in this case were –

- The way in which the Trust dealt with conflicting evidence from Ms Roldan and the colleague who had made the complaint and, in particular, the fact that it assumed that the complainant's evidence was reliable and did not pursue avenues of enquiry which would have allowed them to test her evidence.
- The particularly serious consequences of dismissal for Ms Roldan, who lost her work permit and right to remain in the UK and was also subject to a police investigation (which led to her being prosecuted but acquitted).
- The fact that Ms Roldan had been employed for over four years, apparently without any other complaints being made against her.

In addition to the large compensation award it must now pay, the Trust will have incurred very substantial legal costs fighting this claim all the way to the Court of Appeal. The decision serves as a reminder of the importance of getting *procedures* as well as decisions right.

Practical steps employers can take to protect themselves

- Remember that you must form a genuine belief on *reasonable grounds* that the misconduct has occurred.
- Careful investigations must always be carried out, but a Tribunal will look at each individual case and decide whether the employer “...*had carried out as much investigation into the matter as was reasonable in all the circumstances...*”. The more serious the consequences of dismissal are for the employee, the more careful the investigations should be. In this case the employee's length of service and previous unblemished record were also important considerations in the test of what was reasonable.
- Take care not to make assumptions about the reliability of a person's evidence.

- Where there is conflicting evidence consider whether there are ways in which you could test that evidence and if there are, do so.
- Keep in mind that in cases where there is conflicting evidence, you do not have to believe one employee and disbelieve the other. If you cannot resolve the conflict it may, depending on the circumstances, be perfectly proper to conclude that you do not find the case 'proved' and give the benefit of the doubt to the person whom it is alleged has done wrong.

If you are an employer we can –

- Review and if necessary improve your disciplinary procedures.
- Guide you through any disciplinary proceedings.
- Advise and represent you in relation to any claims resulting from disciplinary action, including dismissal.

If you are an employee we can –

- Advise and represent you in relation to any disciplinary action, including the threat of dismissal.

For further information

Please call us on 020 7148 7850 or email info@levenesemployment.co.uk

Alternatively please contact Victoria Willson directly on 020 7148 7852 or wwillson@levenesemployment.co.uk

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