

Employment Alert

Postponing Disciplinary Proceedings

The Employment Appeal Tribunal (EAT) has overturned the decision of an Employment Tribunal (ET) and ruled that where an employee is being investigated by the police at the same time as they are facing disciplinary proceedings, the employer has a wide discretion whether to continue or postpone the disciplinary proceedings

Facts: The employee worked as a prison officer. In April 2006 allegations of misconduct were made about him. He was suspended and the matter was referred to the police on 2 May 2006. The police conducted investigations, culminating in the Claimant being acquitted at a Crown Court hearing on 30 April 2007. Following the Claimant's acquittal on the criminal charges, his employer continued its investigation into the misconduct allegations. The allegation hinged upon whether the Claimant's statements were to be believed over those of two fellow prison officers. Eventually the Claimant was dismissed on 6 February 2008.

In overturning the decision of the ET, the EAT held that it was perfectly reasonable for the employer to postpone the internal disciplinary pending criminal investigations. Indeed, employers faced with this situation had a wide discretion and often, as was the case here, postponement was in the employee's best interest as any evidence gained in the internal investigation would have to be forwarded to the police. The ET had also

looked at the evidence gathered, and concluded that the Governor did not honestly believe that the Claimant had been guilty of misconduct. In allowing the appeal, the EAT held that an ET should not substitute its own view for that of a disciplinary hearing. The correct test was whether the employer had reasonable grounds for forming the belief that the employee was guilty of misconduct.

Comment: Employers are often in a difficult position when misconduct is also the subject of a police investigation. In serious cases, the police will often ask the employer not to undertake their own investigation until an employee has been to Court, as the police are concerned that an employer's investigation may prejudice the criminal case. This case provides some clarification for employers, although if an employer is asked not to conclude their own investigation until the criminal case is over, an employer may face a hefty wage bill if an employee is suspended on full pay.

Conduct Dismissals: Following the above case, the Court of Appeal has provided another judgment which says that the greater the consequences of disciplinary action against an employee, the more careful the investigation that must be conducted by the employer. In this case the consequence was deportation of the employee. The Court of Appeal also held that where there is conflicting evidence between two witnesses, the employer does not have to prefer the evidence of one employee over the other, but could give the 'wrongdoer' the benefit of the doubt.



Tribunal Awards

Unfair Dismissal (Basic)	£ 11,400
Compensatory Award	£ 65,300
A week's pay	£ 380
Additional Award	26-52 weeks pay
Dismissal for health & safety reasons/ whistleblowing	No limit
Discrimination	No limit
Breach of Contract	£ 25,000



If you have any comments or queries, please contact your HR representative or alternatively email HR Direct at info@hrdirect.org.uk or call **07812 073379**.