

Gross misconduct dismissal – the pitfalls of social media

Employers are very much alive to the reputational risks posed by the use of social media by their employees, but the dividing line between private and public use may be difficult to determine. In the case of [Game Retail Limited v Laws](#), the Employment Appeal Tribunal (EAT) overturned a Judge's finding of unfair dismissal following an employee's Twitter activity.

Mr Laws was employed by Game Retail as a manager with responsibility for over 100 stores. He opened a personal Twitter account in July 2012 and began to follow the Twitter accounts of the Game Retail stores in order to monitor their activity. His account did not specifically associate him with the company. Sixty five of the stores became his followers on Twitter.

In July 2013 an anonymous store manager notified one of the company's regional managers that Mr Laws had posted offensive and abusive tweets and following an investigation, the company dismissed him for gross misconduct. Mr Laws instigated proceedings against the company for unfair dismissal.

The employment Judge examined the tweets in detail. He accepted that customers and employees of Game Retail might have been offended. However he considered that the tweets were posted for private use and that it had not been established that any member of the public or employee had access to the tweets or associated him with the company. In addition, the company's disciplinary policy did not clearly specify that inappropriate use of social media in private time might constitute gross misconduct.

The Employment Appeal Tribunal (EAT) allowed the company's appeal.

It found that as sixty five stores followed Mr Laws on Twitter they would have seen the tweets and any customers who had picked up on the account would also have seen them.

While there was a balance to be struck between an employee's right to privacy and the employer's concern about reputational risk, the Employment Tribunal's finding that Mr Laws' usage was private was incorrect.

Accordingly the case has been remitted to a different Employment Tribunal for consideration.

The Employment Appeal Tribunal (EAT) declined to give general guidance as to when misuse of social media might constitute gross misconduct. Each case will rely on its own facts but organisations will be in a far stronger position if they have a social media policy that clearly spells out the penalties for misuse and that a disciplinary procedure specifically provides that inappropriate use may constitute gross misconduct.

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