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Dismissal Procedure

A recent case considered how far an Employment Tribunal should be influenced by the circumstances in which a final written warning has been imposed when the fairness of a subsequent dismissal is assessed.

A school science teacher received a final written warning in February 2005 which was to remain on her file for 24 months. She brought an internal appeal but the appeal hearing was adjourned and as the teacher did not seek to rearrange it the final written warning remained in place.

She was suspended within the 24 months for further misconduct and, following an investigation, she was dismissed. Her employer took account of the final written warning on her file. When her claim of unfair dismissal came to be considered the Tribunal found that the dismissal had been fair and, though it expressed some concerns concerning deficiencies in the procedure the employer had followed before issuing the warning, it found that the teacher could have pursued her appeal against the warning and had chosen not to.

Following further litigation the issue of the validity of the final written warning was appealed to the Court of Appeal for consideration. The Court held that it is legitimate for an employer to rely on a final warning provided it was issued in good faith, that there were at least prima facie grounds for imposing it and that it was not manifestly inappropriate to do so. It was stressed that it is not a Tribunal's function to "re-open" a final written warning but only to consider the reasonableness of a dismissal and, in so doing, whether the final written warning could reasonably be taken into account in deciding to dismiss.

While it is essential that proper process is followed at each stage of a disciplinary procedure as this background will be relevant in considering the reasonableness of an ultimate dismissal, this case should provide some reassurance to organisations that the details of a prior disciplinary process will not be unpicked unless there is evidence that the warning was imposed in bad faith or was manifestly inappropriate.

The Court also considered whether it is reasonable for an employer to take into account the fact that an employee does not pursue an appeal against a disciplinary sanction and held that it may be reasonable for an employer to take this into account.

Davies v Sandwell Metropolitan Borough Council [Court of Appeal 2013 EWCA Civ 135]

For more information please contact:

Jane Klauber
Partner
+44 (0)20 8394 6483
Jane.Klauber@russell-cooke.co.uk

Jane Pendry
Solicitor
+44 (0)20 8394 6478
Jane.Pendry@russell-cooke.co.uk

www.russell-cooke.co.uk