Employers can factor into a disciplinary investigation prior incidents even if they went unpunished at the time

[et_pb_section bb_built="1" _builder_version="3.0.100" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" custom_padding="|||" saved_tabs="all" next_background_color="#ffffff" global_module="2165"][et_pb_row global_parent="2165" custom_padding="|||" _builder_version="3.0.100"][et_pb_column type="2_3"][et_pb_post_title global_parent="2165" meta="off" featured_image="off" text_color="light" _builder_version="3.0.99" custom_margin="||0px|" custom_padding="||0px|" /][et_pb_text global_parent="2165" background_layout="dark" _builder_version="3.0.100" text_font="||||||||" custom_margin="0px|||" custom_padding="0px|||"] [post_details] [Social-Share] [/et_pb_text][/et_pb_column][et_pb_column type="1_3"][et_pb_post_title global_parent="2165" title="off" meta="off" _builder_version="3.0.99" /][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section bb_built="1" admin_label="section" prev_background_color="#000000"][et_pb_row admin_label="row" background_position="top_left" background_repeat="repeat" background_size="initial"][et_pb_column type="3_4"][et_pb_text background_layout="light" use_border_color="off" _builder_version="3.0.99"]

When conducting a disciplinary investigation into an employee's suspected misconduct, it may be open to an employer to take into account past conduct which had not attracted disciplinary sanctions at the time.

Ms Pillar was a Nurse Practitioner for NHS 24. Her role involved the telephone triage of patients to ensure that they were directed towards care appropriate to their medical priority. Ms Pillar was responsible for two Patient Safety Incidents (also known as PSIs) in August 2010 and July 2012 as a result of her triaging decisions. NHS 24 elected to deal with these PSIs by offering Ms Pillar development plans and additional training rather than by treating them as disciplinary issues.

After a further PSI arose, a disciplinary investigation was commenced regarding Ms Pillar's conduct. The investigating officer's report into the most recent PSI made reference to the two earlier PSIs. In December 2013, following a disciplinary hearing, Ms Pillar was summarily dismissed for gross misconduct.

Ms Pillar brought a claim for unfair dismissal, alleging that the investigating officer should not have taken into account previous conduct which had not led to disciplinary action at the time.

The Employment Appeal Tribunal held that Ms Pillar's dismissal had been fair. The decision to dismiss had been reasonable on the basis of all of the evidence before the decision-maker, and that included the previous PSIs. It was relevant material, so there was no basis on which to conclude that it should not have been presented to the investigator.

The EAT distinguished between this kind of situation and an expired warning. The expiration of a warning gives an employee a "false expectation" that it would not be determinative in a future disciplinary investigation; Ms Pillar had no such expectation in relation to her previous PSIs. There was no indication of bias, and Ms Pillar had not been denied any opportunities to respond. Therefore, the dismissal was within the range of reasonable responses.

This decision means that it is arguably better to deal with some conduct issues informally to begin with, rather than conducting a disciplinary process and issuing a warning with an expiration date. This seems to leave employers more scope to bring those incidents in as relevant material in future disciplinary investigations to justify findings of gross misconduct.

NHS 24 v Pillar UKEATS/0005/16

[/et_pb_text][/et_pb_column][et_pb_column type=”1_4″][et_pb_sidebar orientation=”right” area=”sidebar-1″ background_layout=”light” remove_border=”off” show_border=”on” /][/et_pb_column][/et_pb_row][/et_pb_section]

What can employers do to support women returning to work?

Emily Plosker discusses BDBF’s support of Smart Works for City Giving Day and how employers can support women returning to work after maternity leave.