

Court of Appeal holds that the label given to a misconduct dismissal is immaterial so long as the employee knows what s/he is accused of

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The Court of Appeal has held that an employer's use of the word 'fraud' as shorthand for alleged gross misconduct was an immaterial consideration as to whether the subsequent dismissal was fair. It was merely a label.

Ms Brito-Babapulle was employed as a consultant haematologist at Ealing Hospital and was contractually permitted to treat private patients. She was absent from work on grounds of ill-health between 13 March 2009 and 8 June 2009. The hospital believed that Ms Brito-Babapulle had continued to see private patients during that period despite it having notified her twice that she should not do so whilst off sick. The hospital commenced disciplinary proceedings on grounds of gross misconduct. A disciplinary panel found that Ms Brito-Babapulle had held private appointments whilst receiving sick pay from the NHS. The hospital concluded that this "constituted fraud which could be considered as gross misconduct" and Ms Brito-Babapulle was summarily dismissed.

Ms Brito-Babapulle brought a claim for unfair dismissal. She argued that the hospital had accused her of fraud and, therefore, her conduct needed to amount to fraud to justify her dismissal. Ms Brito-Babapulle further alleged a breach of the rule that an individual must know the case it must meet and whether there are allegations of dishonesty.

The Court of Appeal disagreed, holding that the nature of the allegations against Ms Brito-Babapulle was clear from the outset; she had been dismissed for conducting a private practice whilst on paid sick leave. Though the Court disagreed with the hospital's use of the word 'fraud', and cautioned generally against the use of emotive language as a label for conduct, it held that it was just that – a label for conduct which had been clearly described. As such, whether or not Ms Brito-Babapulle was guilty of fraud was immaterial to whether or not she had been unfairly dismissed.

Brito-Babapulle v Ealing Hospital NHS Trust [2014] EWCA Civ 1626

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