Dismissal of employee who brought numerous “frivolous and vexatious” grievances was fair

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In the case of Hope v British Medical Association the Employment Appeal Tribunal upheld a decision that it had been fair to dismiss an employee who raised multiple informal grievances and refused to progress them or attend a grievance hearing.

What happened in this case?

The claimant was employed by the British Medical Association between June 2014 and May 2019. By February 2019, he had raised around seven grievances. The claimant said he wished to discuss these grievances informally with his line manager. However, as the grievances related to more senior managers, his line manager did not have authority to resolve the issues raised.

The claimant refused to progress any of the grievances to a formal stage. Instead, he sought to reserve the right to do so and did not withdraw the grievances. However, the employer treated the complaints as formal grievances and a grievance hearing was scheduled for 21 March 2019. The claimant refused to attend despite being informed that attendance was a reasonable management instruction. He was also told that if he persisted with filing grievances this may be treated as a disciplinary issue.

Eventually, he was invited to attend a disciplinary hearing in April 2019 to respond to three allegations made against him. These were that:

- he had submitted numerous, frivolous grievances against two senior managers;

- he had failed to follow a reasonable management instruction to attend the grievance hearing; and
- there had been a fundamental breakdown of the working relationship between him and senior management.

The disciplinary chair concluded that each of the allegations was made out and the claimant was dismissed for gross misconduct. He brought a claim for unfair dismissal. The Employment Tribunal found that the dismissal was fair. The claimant appealed to the EAT.

What did the EAT decide?

The claimant argued that the Employment Tribunal had failed to consider whether the alleged misconduct was capable of amounting to gross misconduct in the contractual sense. He suggested that the Tribunal should have considered whether his conduct amounted to either a "deliberate and wilful contradiction of the contractual terms" or "very considerable negligence". He also argued that the Tribunal's decision was perverse, and his conduct did not justify dismissal.

The EAT held that the employer had not raised "contractual gross misconduct" as a reason for the dismissal and, on that basis, a contractual analysis was not required. The EAT disagreed with the claimant's submission that whenever the label "gross misconduct" is used an analysis of whether the conduct amounts to either a wilful contradiction of the contract or gross negligence is always required. In this case, the real question was the statutory one, namely, whether the employer had acted reasonably in treating the conduct as a sufficient reason to dismiss.

The EAT also concluded that the Tribunal's decision was not perverse. Importantly, the EAT noted that the proper purpose of grievance procedures is to resolve concerns, not to act as a repository for complaints to be left unresolved and resurrected at will. It was unreasonable for the claimant to

raise numerous complaints and expect to leave them unresolved. His failure to attend the grievance hearing could also be regarded as wrongdoing in the circumstances. Therefore, the Tribunal was entitled to conclude that the dismissal fell within the band of reasonable responses of a similarly sized employer. The appeal was dismissed.

What does this mean for employers?

This decision confirms what many employers already knew, namely that a dismissal is fair if it complies with the requirements of the statute – there is no gloss requiring the employer always to show contractual gross misconduct or negligence. However, this does not mean that dismissing an employee for misconduct is straightforward. There are still the statutory questions of whether the misconduct is sufficient to justify dismissal and whether a fair dismissal procedure has been followed to address. Failure to satisfy both elements puts an employer at risk of an unfair dismissal claim.

The decision also shows that the raising of multiple frivolous grievances, and a failure to progress them formally, may justify dismissal. Employers may wish to update disciplinary rules to specify that this will be treated as gross misconduct.

Hope v British Medical Association

If you would like to discuss any issues arising out of this decision please contact James Hockley (jameshockley@bdbf.co.uk) or your usual BDBF contact.

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