

Disregarding an independent appeal panel's decision does not render a dismissal unfair

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The EAT ruled that an employee had not been unfairly dismissed after her employer disregarded the independent appeal panel's

decision, which overturned the employer's original decision to dismiss. Given that the employer was a small nursery, there was no other appropriate person to hear the appeal, there were no clear terms of engagement with the independent panel and a subsequent investigation was completed as part of the appeal, the employer was not bound by the appeal panel's decision.

Ms Kisoka was a nursery practitioner at Rydevale who was alleged to have set fire to the nursery. Rydevale had reviewed CCTV footage, which it believed was sufficient evidence to establish that Ms Kisoka had started the fire as she was the only member of staff in the area. Ms Kisoka did not adequately explain her movements and consequently was dismissed for gross misconduct.

She appealed the decision but due to the nursery's size and that there were no independent managers to hear the appeal, Rydevale outsourced the hearing of the appeal. The appeal panel overturned the nursery's decision as it felt there was insufficient evidence to implicate Ms Kisoka. However, Rydevale decided to ignore the independent appeal panel's decision and refused to reinstate Ms Kisoka. Ms Kisoka claimed unfair dismissal.

The EAT agreed that there was no overall unfairness and the decision was not unreasonable given that: (i) Rydevale is a small organisation and there was no one to hear the appeal; (ii) there were no clear terms of engagement with the independent appeal panel and; (iii) a subsequent investigation was completed as part of the appeal. There was also a particular emphasis on the fact that Rydevale is responsible for the welfare of children, perhaps signifying the threshold for the employer needing to demonstrate that it had a reasonable belief in the employee's guilt was lower in these circumstances.

This case shows that an employer will not always be bound by an independent appeal panel's decision. However, this decision

does not give employers free rein to ignore such appeal decisions. In this case, the size of the organisation, the nature of the work and the fact that the original investigation was reasonable all assisted the employer.

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