

# Employee fairly dismissed despite procedural defects

```
[et_pb_section admin_label="Section" global_module="136"
fullwidth="on" specialty="off" transparent_background="off"
background_color="#ffffff" allow_player_pause="off"
inner_shadow="off" parallax="off" parallax_method="off"
padding_mobile="off" make_fullwidth="off"
use_custom_width="off" width_unit="on" make_equal="off"
use_custom_gutter="off"] [et_pb_fullwidth_code
global_parent="136" admin_label="Post
Header"] [Page_Header_Start] Employment Law News
[Page_Header_End] [/et_pb_fullwidth_code] [/et_pb_section] [et_pb
_section admin_label="section"] [et_pb_row
admin_label="row"] [et_pb_column type="3_4"] [et_pb_text
admin_label="Text" background_layout="light"
text_orientation="left" use_border_color="off"
border_color="#ffffff" border_style="solid"]
```

# Employee fairly dismissed despite procedural defects

[post\_details]

## [Social-Share]

[post\_tags]

A fairly conducted appeal is capable of remedying even serious procedural defects in the first part of a disciplinary process.

Ms Adeshina was a Principal Pharmacist employed by the Prison Service as part of St George's University Hospital Trust. She

objected to the Prison Service's plans to change the way it ran its pharmacy services; her resistance to the project gave rise to allegations of misconduct, such as unprofessional and inappropriate behaviour. The disciplinary process (conducted by Ms Ashworth) itself contained a number of procedural failings; for example, not all of the evidence informing the decision was presented to Ms Adeshina for her to provide an explanation. Ms Adeshina was dismissed, against which she appealed.

The appeal was conducted by three senior managers, comprising: (i) one manager, Ms Ludlam, who mentored an alleged victim of Ms Adeshina's misconduct; (ii) another, Mr James, who was less senior and in fact reported to Ms Ashworth; and (iii) an independent advisor. The appeal consisted of a complete rehearing, after which the dismissal decision was upheld.

Ms Adeshina brought a number of claims, including unfair dismissal. She objected to the constitution of the appeal panel, arguing that Ms Ludlam was biased due to her contact with the alleged victim, and that Mr James' lack of seniority would mean that he was swayed.

The Employment Appeal Tribunal held that the appeal had been fairly conducted, all things considered. It found that senior managers in most companies will, in reality, have had some prior dealings with the employees involved in a dispute without them necessarily being biased. Further, though ACAS guidance does provide that appeals be conducted by more senior managers than those who made the disciplinary decision, the presence of an independent advisor allayed concerns that Mr James would be pressured. The defects in the initial disciplinary hearing were serious, but not so serious as to prevent the appeal from remedying them. The process must be looked at in the round and the means by which Ms Adeshina's dismissal was brought about were fair overall.

This demonstrates the power that a well-conducted appeal can

have in fixing the problems in a disciplinary procedure particularly when done by way of a rehearing.

Adeshina v St George's University Hospitals NHS Foundation Trust and others UKEAT/0293/14

```
[/et_pb_text][/et_pb_column][et_pb_column
type="1_4"][et_pb_sidebar      admin_label="Sidebar"
orientation="right" area="sidebar-1" background_layout="light"
remove_border="off"]
[/et_pb_sidebar][/et_pb_column][et_pb_row][et_pb_section]
```