Employee's previous breaches did not bar a constructive dismissal claim

[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's previous breaches did not bar a constructive dismissal claim

[post_details]

[Social-Share]

[post_tags]

The Employment Appeal Tribunal has held that an employee's previous breach of contract did not prevent him from bringing

a claim for constructive dismissal against his former employer. However, the EAT noted that if the employer established that it could have fairly dismissed the employee had it known about his previous breach of contract, the employee's compensation could be reduced by up to 100%.

The claimant, Mr Atkinson, was a director of resources at a housing association, CGA. In late 2010, the housing association discovered an overspend of £1.8 million in its budget and suspended Mr Atkinson whilst it conducted an investigation. During its investigation, the employer discovered that Mr Atkinson had been in a relationship with an employee at another housing association. In breach of the IT policy, which Mr Atkinson had written, he had sent her overtly sexual emails which had not been marked private. He had also assisted her application to his employer by telling her what to expect at interview and suggesting to a panel member that she should be hired without disclosing the nature of his relationship with her. These issues were added to the on-going disciplinary proceedings.

A disciplinary hearing took place on 9 March 2011. On 14 March 2011, Mr Atkinson resigned with immediate effect claiming that he had been constructively dismissed and entitled to resign because of the way in which the proceedings were being conducted by CGA. Mr Atkinson also claimed that CGA's search of his emails had breached his right to respect for his private life under the European Convention of Human Rights.

The EAT held that even though Mr Atkinson was originally at fault, when CGA subsequently breached the employment contract, Mr Atkinson had been entitled to resign as a result. However, the EAT held that where a party at fault brought a successful claim for constructive dismissal, the tribunal would have to consider a reduction in compensation of up to 100 per cent for contributory fault. The EAT also considered CGA's IT policy and held that there had not been an unjustified breach of Mr Atkinson's private life and that he had no reasonable

expectation that emails not marked private would not be taken into account in a disciplinary process.

This ruling means that when employees claim constructive dismissal it will generally be worth investigating whether prior to dismissal they have been up to no good as any prior misconduct could reduce any compensation. However, employers should be careful about investigating an employee in response to a discrimination claim as it could amount to victimisation. Although in this case there was no breach of Mr Atkinson's right to a private life under the European Convention of Human Rights employers should make it clear in IT policies that employees' emails may be monitored.

Atkinson v Community Gateway Association UKEAT/0457/12

[/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]