

Police evidence used during a disciplinary hearing

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Police evidence used during a disciplinary hearing

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An employee has no reasonable expectation of privacy in circumstances where they are suspected of harassing a work colleague in a way which was closely connected to the workplace.

Mr Garamukanwa was a clinical manager at Solent NHS Trust and he had previously been in a relationship with a staff nurse at the hospital, Ms Maclean. When that relationship ended, Mr

Garamukanwa believed that Ms Maclean had entered into a relationship with Ms Smith, a colleague of hers, though they denied this. He sent emails to both women stating that if they did not inform their manager, Mr Brown, about their relationship, he would do so.

A person then anonymously began a feud of sorts with Ms Maclean and Ms Smith. Mr Brown received a letter accusing the women of inappropriate sexual behaviour at work. A false Facebook page was created to which 150 Trust employees were added and a number of malicious emails (the content of which suggested that the author had been following the women) were sent to numerous colleagues, including members of the Trust's management.

Ms Maclean complained to the police and the Trust suspended Mr Garamukanwa on full pay. The police arrested Mr Garamukanwa and the subsequent investigation, whilst not resulting in charges being brought, turned up some photographs taken from his personal mobile phone. They included photographs of Ms Maclean's house and a list of the email addresses to which some of the unpleasant emails were sent. The police gave those photographs to the Trust and advised that it could use them for the purposes of its own internal investigation.

The Trust found that the police photographs proved Mr Garamukanwa's involvement in the campaign against Ms Maclean and Ms Smith. As a result, it summarily dismissed him on the basis of gross misconduct. In bringing his Employment Tribunal claim, Mr Garamukanwa argued that the Trust's use of the photographs handed to it by the police had breached his right to privacy. The Employment Appeal Tribunal held that Mr Garamukanwa could have no reasonable expectation of privacy. Firstly, his actions had been strongly connected to the workplace – he had sent emails to work colleagues on work email addresses about a relationship he claimed was inappropriately taking place at work. What is more, they had adverse consequences on other employees, Ms Maclean in

particular. Secondly, Mr Garamukanwa had not objected to the photographs being used whilst the Trust was conducting its investigation, and thirdly, the police had permitted the Trust to use the photographs for that purpose.

Garamukanwa v Solent NHS Trust UKEAT/0245/15

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