

Judgments provide clarification on extent of employer's investigations into employee misconduct

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Two recent cases relate to employers' investigations into misconduct by their employees.

In *Shrestha v Genesis Housing Association*, the Court of Appeal confirmed that an employer does not have to investigate extensively every line of defence put forward by the employee.

Mr Shrestha was the subject of disciplinary proceedings after claiming unusually high mileage in expenses for a number of months, and was dismissed as a result of the proceedings. The claimant provided detailed explanations for each journey and contested the dismissal on the basis that the Housing Association had not considered all the justifications provided. The employer suggested it was not necessary to go through each explanation, as every journey was above the suggested mileage provided by route-finders.

The Court of Appeal confirmed that an employer is not required to investigate each line of defence, and that the reasonableness of the investigation carried out by the employer should be looked at as a whole.

In *Williams v Leeds United Football Club*, the High Court found that a pornographic email sent by Mr Williams over five years prior to his dismissal amounted to a serious breach of contract, and entitled the employer to dismiss him without notice.

The employer, Leeds United FC, actively sought evidence of gross misconduct following Mr Williams' dismissal, and discovered an inappropriate email sent over 5 years beforehand.

The court found that the employer was entitled to rely on the email to prove repudiatory breach, despite the passage of

time, and despite the fact that it had been discovered after Mr Williams' dismissal. It was not relevant that the employer had actively been looking for a reason to dismiss the employee.

The findings in these cases will be useful for employers, as they shed light on the expected parameters and scope of employer investigations into employee misconduct. Where an investigation uncovers evidence which may amount to serious breach of contract, as illustrated in the second case, employers should be careful not to do anything which could be construed as affirmation of the contract following discovery.

Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94

William v Leeds United Football Club [2015] EWHC 376 (QB)

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