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Could suspension of an employee pending an investigation amount to a breach of their employment contract?

The Court of Appeal recently provided authoritative guidance on disciplinary suspensions including on whether the suspension of an employee facing serious allegations, pending an investigation, could amount to a repudiation of their employment contract.

08 March 2019

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The Court of Appeal recently provided authoritative guidance on disciplinary suspensions including on whether the suspension of an employee facing serious allegations, pending an investigation, could amount to a repudiation of their employment contract. We acted for the employer throughout the case.

In *London Borough of Lambeth v Agoreyo*, Ms Agoreyo was employed by the Borough as a primary school teacher and had struggled to teach two pupils in her class who exhibited challenging behaviour.

In the first few weeks of her employment three incidents occurred in which Ms Agoreyo was alleged to have used physical force against one or another of the children. These included dragging a child across the floor and picking up a child when they refused to leave the class.

The Head Teacher suspended Ms Agoreyo pending an investigation. Ms Agoreyo resigned the same day.

Ms Agoreyo brought a claim in the County Court alleging her employer had committed a fundamental, repudiatory breach of the implied term of trust and confidence by suspending her. The County Court dismissed the claim but the High Court held the suspension was a 'knee-jerk reaction' to the 'strident terms' in which the allegations were put and decided the suspension was a fundamental breach of contract on the basis that it had not been reasonable and/or necessary.

The Court of Appeal unanimously ruled in favour of the borough on the following grounds:

- the High Court had substituted its own judgement for the County Court findings of fact
- the test of whether the suspension was 'reasonable and/or necessary' was wrong, the correct test was whether the employer had reasonable and proper cause to suspend Ms Agoreyo.

The Court of Appeal's decision provides helpful guidance on when to suspend. It is applicable to Employment Tribunal claims of constructive unfair dismissal.

Contact

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