

When will altering an investigation report result in an unfair dismissal?

The case of *Dronsfield v University of Reading* looked at altering an investigation report result which resulted in an unfair dismissal.

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The case of *Dronsfield v University of Reading* looked at precisely this issue. In this case, the Claimant was dismissed for misconduct after he had a sexual relationship with one of his students and failed to disclose that relationship, contrary to the University's policy on disclosure. The Claimant could only be dismissed for "good cause", as defined in the relevant statute governing the University. A ground for "good cause" was "conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office or employment".

Investigators were appointed to look into the allegations that the Claimant:

- Had a sexual relationship with a student without reporting it, thereby creating a potential conflict of interest;
- Abused a position of power to influence a vulnerable student to enter into a personal relationship; and
- Acted in breach of his duty of care towards the student.

During the course of the investigation, the Claimant admitted to having had sex with a student (although he denied that this amounted to a "relationship"). The investigators produced a draft written report and, in doing so, wrote comments that were favourable to the Claimant – including an opinion that there was no evidence of immoral, scandalous or disgraceful behaviour, nor an abuse of power, and that it was difficult to conclude that there had been a breach of the duty of care.

The report was subsequently amended prior to it being submitted, on the advice of the University's in-house solicitor. This was on the grounds that the investigators appeared to be straying beyond the remit of their investigation, and into the realm of what the disciplinary panel should have been deciding.

Following his dismissal (and subsequent unsuccessful appeal), the Claimant brought employment tribunal proceedings, arguing that his dismissal was unfair. He argued that the amendments to the investigation report denied him the benefit of the full findings of the investigators.

The employment tribunal disagreed and the employment appeal tribunal upheld their findings. It was held to be reasonable to amend the investigation report in this manner. Importantly, it was not suggested in any way in this case that the investigators had withheld any evidential material collated during their investigation – as all of that evidence was available for the disciplinary panel. The elements removed were done so on the basis of legal advice for reasonable reasons. There was no suggestion of any kind of impropriety – the investigators had not been pressurised to change their report and, when the issue had been considered as part of the internal appeal, the suggestion that the changes had been made to make dismissal more likely had been rejected.

Here, amending the report did not render the dismissal unfair – but it took the University two separate employment tribunal hearings, and two separate employment appeal tribunal hearings, to get to this point. Clearly, this could have been avoided if the evaluative opinions of the investigators had never been added to their report in the first place.

The role of investigators

It is key that employers ensure that their investigators have sufficient training and experience to carry out the role asked of them. This case is a clear illustration as to why it would have been better for all concerned had the investigators been clear on what issues and

aspects they should and should not have been addressing, before they started to draft their report.

Investigators need to be clear on the scope of the allegations they are being asked to look into – and their role should be limited to a fact-finding exercise, with the investigation report clearly identifying all the evidence uncovered during the process. The report should be their own conclusions, and, whilst they are free to take legal or HR advice, they should not be pressurised into changing those conclusions.

In a disciplinary context, recommendations should be limited only to whether or not the evidence supports proceeding to a disciplinary hearing. It is not for the investigators to comment on what sanction(s) may or may not be appropriate, nor for them to include their own personal evaluative opinion on whether or not the allegations are well-founded. This can be hard – as some degree of judgment is required to be able to assess whether or not the matter should proceed; and where an individual admits the conduct alleged as part of the investigation, there may well be a temptation to comment on the gravity (or otherwise) of that conduct. However, clear terms of reference for any investigation, and comprehensive training, can help investigators from straying into the wrong territory.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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