

Disciplinary and Dismissal Cases

Read the following case studies and consider the appropriateness of the responses to the situations given.

Case Study 1 – Emma Holt

Emma Holt, who worked at the Carlisle branch of Bannatyne Fitness for almost 10 years, had a flexible working agreement with her employers to only work Monday to Friday to accommodate her son and childcare needs. She would only work weekends in exceptional circumstances – to cover a sick colleague, for example – because she was unable to arrange childcare cover.

However, in early 2016, senior managers at the fitness centre insisted Holt work weekends. Holt claimed the proposed rota would not bring any additional benefits to the company, and persisted in her refusal to work weekend shifts. She looked into paid childcare but there were no weekend facilities open in her area.

Holt raised a formal grievance. She told her employer: “My personal life doesn't allow me to work weekends. I have always given 150 per cent in this company and I have always run the spa like it is my own. Whatever days I am in they get my full attention and I have put in extra time when needed in the past.

“I am not trying to be difficult with this. I fully understand where the business is coming from. I have no objections to working weekends but I just can't get childcare that my son will go to.

“Enforcing a change to my work pattern is breaching my flexible work agreement. I do feel this is unfair on the ground that I have worked continually for the company and with very little absence over the 10 years for either myself or my child.”

The grievance was not properly investigated. She was later made redundant.

Case Study 2 – Bellman and Northampton Recruitment

After the firm's Christmas party ended, a number of staff members went to a hotel, including the firm's managing director and Bellman, a sales manager. Some staff continued to drink alcohol. For about 45 minutes there was general chit chat on a variety of topics. Then the conversation turned to company business, including plans for the following year. Bellman brought up the issue of a recent appointment to the firm, which proved controversial. The managing director, now very intoxicated, became annoyed. He lectured those present about how he owned the company; he was in charge; he would do what he wanted; the decisions were his to take and he paid their wages. Nevertheless, Bellman, in a non-aggressive manner, challenged the managing director's decision about the location in which the new recruit should work.

The managing director punched Bellman, who fell down. Bellman got back up, bleeding from his left eye area, holding out his hands in a gesture of surrender. The director then hit him again, so that Bellman fell straight back, hitting his head on the ground and rendering him unconscious. He was taken to hospital, where a scan revealed he had a fractured skull. He was eventually diagnosed as having suffered a severe traumatic brain injury with subsequent cognitive, emotional and behavioural consequences, with the result that he was unlikely to return to any paid employment. He sought damages from the employer, on the basis that the firm was vicariously liable for its managing director's actions. The employer denied responsibility

Case Study 3 – Rebekah Sutcliffe

Assistant chief constable Rebekah Sutcliffe, at a work-based event, launched an hour-long tirade against superintendent Sarah Jackson, during which she castigated her direct report for having breast enhancement surgery.

Sutcliffe had been drinking wine when she confronted Jackson and publicly condemned her for having the surgery, calling her “silly, vain and frivolous” during a Senior Women in Policing conference that took place at the Hilton Hotel in Manchester in May 2016.

She then exposed her own breasts and said: “Look at these, look at these, these are the breasts of someone who has had three children. They are ugly but I don’t feel the need to pump myself full of silicone to get self-esteem.”

Sutcliffe told Jackson that her “credibility was zero” after the procedure and berated her as a “laughing stock” who would be judged professionally for the size of her breasts.

The incident ended with Sutcliffe telling Jackson she would no longer support a further promotion for her. Sutcliffe had earlier appointed Jackson a temporary superintendent in a secondment role. Jackson left the incident in tears.

Despite a series of apologies from Sutcliffe, a formal complaint was made and she was suspended on full pay. Jackson told the hearing that the encounter had left her “shocked, mortified, embarrassed and ashamed”, and she had suffered “great anxiety from the night itself and since”. She added that it had been the “most distressing and hurtful experience of my life”. Jackson also complained that she had been the subject of a Twitter frenzy using the hashtag #titgate, as well as a poll about the size of her breasts.

Jackson has since been transferred to Cumbria constabulary, and Sutcliffe sought help from a therapist during her suspension. The disciplinary panel found her guilty of gross misconduct.

Case Study 4 – Andrew Everitt

The case dates back to October 2015, when Everitt had been working at the Subway chain’s Parkway branch for a year. He had been diagnosed with high-functioning autism in 2013 and said he had informed his line manager of his condition.

A hygiene inspector visited the branch and the store failed its evaluation, with the workplace found to be a “mess” containing out-of-date food that had not been thrown away.

Everitt was summoned to a disciplinary hearing a few days later, which he attended alone. He was dismissed by letter as a result of his behaviour at the meeting, and his inability to explain the hygiene inspection, which was described as “wholly inadequate”. A colleague in the store was given a written warning.

Everitt appealed the decision and was offered his job back, but refused as he felt “bullied” by the disciplinary process.

Case study 1 - Emma Holt

The tribunal ruled that Holt was unfairly dismissed and suffered sex discrimination. She was awarded £18,399, which included £10,399 for unfair dismissal and £8,000 for injury to her feelings.

The tribunal accepted Holt suffered “anger, distress and affront” as a result of the company's “indirect discrimination”, but rejected a claim that she was victimised by her employer.

but a senior manager did not conduct “any meaningful investigation” into Holt’s complaints, the tribunal heard.

The firm has admitted unfair dismissal, but rejected charges of sex discrimination.

PM DAILY (CIPD) [Emily Burt](#) 12 Dec 2016

Case Study 2 – Bellman and Northampton Recruitment

High Court Ruling

For Bellman’s case to succeed, his legal team needed to show the firm was liable for its managing director’s wrongdoings. This required a sufficient connection between the assault and the nature of the managing director’s employment to conclude it would be fair to hold the firm liable, even though it had committed no wrong. The judge decided the employer was not vicariously liable (responsible in law) for five main reasons:

1. The assault was committed after, not during, an organised work social event
2. What followed after the party was an "impromptu drink"
3. The spontaneous post-event drink at the hotel could not be seen as a seamless extension of the Christmas party; the participants were hotel guests, having a very late drink
4. There must be a limit to the effect of a discussion being about work-related issues. The first part of the conversation was about social topics. Only after that did the conversation turn to work matters
5. Although the managing director was trying to assert his authority just before making the attack, merely raising something that relates to duties at work does not change the situation to something which is ‘in the course of employment’

Comment

Most will undoubtedly be appalled by the brutality of the assault in this case and the consequential injuries suffered by the claimant, but those organisations breathing a sigh of relief that the employer was not held liable should do so with caution.

The judge appears to have given great weight to the fact that the attack happened after the company’s Christmas party had finished – it was three hours later, during an impromptu drink, where social matters had been discussed initially. This, it seems, outweighed the evidence that the discussions had turned to work-related matters, including the company’s plans for the future, and that just before the attack, the managing director had gone to great lengths to assert his authority. Decisions on vicarious liability are always finely balanced and another judge may not have seen it the same way; indeed, this judgment may be appealed.

In addition, from an employment law point of view, there are two other aspects to consider. The first is that an organisation may be able to take disciplinary action against an employee for misconduct outside work where it can show the nature of the unacceptable behaviour makes the employee unsuitable to carry out the job he or she is employed to do, or that he or she has acted in a way which damages the organisation’s reputation.

The second issue is that employers are liable for acts of discrimination and harassment committed by employees ‘in the course of employment’ under the Equality Act 2010. This can include an unlawful act occurring at a social gathering outside work where it can be

shown that the circumstances amount to an extension of work, for example, a leaving 'do', a pub lunch to discuss work matters, or a company Christmas party.

PM DAILY (CIPD) [Makbool Javaid](#) 12 Dec 2016

Case Study 3 – Rebekah Sutcliffe

Sutcliffe admitted the less serious allegation of misconduct in failing to treat with respect or courtesy, and admitted she had abused her position and authority. She also acknowledged that her actions discredited the police service, but denied that they amounted to gross misconduct, which could lead to her dismissal.

Although the disciplinary panel at Greater Manchester Police's headquarters found her guilty of gross misconduct, it stopped short of dismissing her from her £109,000-a-year job because of her positive track record in the workplace. The panel ruled that a chief officer "with a weaker record" would have been recommended for dismissal.

Sutcliffe's counsel, John Beggs QC, told panel chair Rachel Crasnow QC, Her Majesty's Chief Inspector of Constabulary Tom Winsor and independent member Alastair Cannon that she was still a "role model" to women despite the incident. He said the officer's "stupid mistake" of getting too drunk did not demand dismissal because she was someone who could continue to make an "immensely positive contribution to policing and service to the public". "Assistant chief constable Sutcliffe remains a role model – a role model who is not perfect, who has human frailties," he added. "Greater humility has been brought upon her. She will emerge as an even more impressive senior leader if you permit her to. She is a strong leader. She is an inspirational and visionary leader."

At the conclusion of the hearing yesterday, Crasnow said: "ACC Sutcliffe allowed herself to drink too much and when drunk behaved shockingly, cruelly and hurtfully to supt Jackson. She stupidly exposed her breasts."

She added that Sutcliffe's conduct had been "aggressive, bullying and cruel" and that it "fell far, far below that to be expected by any officer and also a role model of her high rank."

"This case has taken Sutcliffe to the very precipice of dismissal. What's saved her is her contrition and the steps she's taken and continues to take to reform herself and the very high professional esteem in which she's justly held, as evidenced by more than 100 testimonials."

PM DAILY (CIPD) [Marianne Calnan](#) 2 Dec 2016

Case Study 4 – Andrew Everitt

Everitt was awarded £15,484 after a tribunal judge ruled he was dismissed as a direct consequence of being autistic.

Andrew Everitt's employer, Regal Consultancy Ltd – which supplies staff to Subway stores in Suffolk – failed to put special measures in place when it began a disciplinary process against him, the tribunal ruled. As a consequence, he was treated less favourably because of his disability.

The tribunal found he had suffered disability discrimination as a result of his treatment, and his employer's failure to make reasonable adjustments to the disciplinary interview by allowing a family member to attend with him. A claim for constructive dismissal failed as Everitt was judged not to have resigned his position.

Sallie Davies, a discrimination adviser at the Ipswich and Suffolk Council for Racial Equality, who represented Everitt at the tribunal, said: "For a person with autism to be subjected to fast-paced questioning without being given a chance to think, and maybe complicated questions, was one of the reasons it was discriminatory. [His employer] didn't allow Andrew to have somebody with him either, such as a family member. That would be a normal thing you would do to reassure him."

Everitt said he pursued the case because he wanted to illustrate how people with autism felt their condition was “ignored” in workplaces.

It has emerged that Everitt has yet to receive his compensation from Regal Consultancy.

The *East Anglian Daily Times* quoted the firm’s director, Gurdeep Sethi, claiming that settling the bill would put other staff under threat: “The company isn’t financially viable to pay that. It’s not to say we won’t pay it. We might be working on some sort of payment plan.”

A Subway spokesperson said: “The Subway brand is committed to maintaining a diverse and inclusive environment and does not condone discrimination of any kind. All stores are independently owned and operated by franchisees who handle all staffing matters. We do require franchisees to follow all local and country laws.”

PM DAILY (CIPD) [Marianne Calnan](#) 16 Dec 2016