

Review

Employment



Breaches of a contractual disciplinary procedure may lead to damages

A claim for damages resulting from breaches of a contractual disciplinary procedure can succeed, the Court of Appeal has held in *Edwards v Chesterfield Royal Hospital NHS Foundation Trust [2010]*.

Mr Edwards worked as a consultant for an NHS Trust. His contract of employment provided that he was entitled to three months' notice of termination of employment, and also set out a contractual disciplinary procedure which included a number of specific provisions. Those included, for example, that any disciplinary hearing would be heard by a panel which would include a clinician of the same discipline as Mr Edwards and a legally qualified chairman, and that Mr Edwards could have the benefit of legal representation at the hearing if he wished.

Mr Edwards was summarily dismissed in February 2006 for gross professional and personal misconduct following a disciplinary hearing. The disciplinary hearing was not conducted in accordance with the contractual procedure, as the panel included neither a clinician nor a legally qualified chairman, and Mr Edwards' request for legal representation was refused.

As a result, Mr Edwards brought a claim for damages for breach of contract against the Trust. He claimed that:

- the fact that the disciplinary hearing was not conducted in accordance with the contractual procedure led to the Trust's finding of misconduct and so to his subsequent dismissal, and this conclusion would not have been reached had the correct contractual procedure been followed;
- the finding of misconduct and subsequent dismissal resulted in his being unable to obtain permanent employment in the NHS, although he subsequently worked as a locum; and
- this would result in lost earnings of over £4 million over the duration of his career.

Focusing on the issue of the scope of damages should Mr Edwards' case succeed, the District Judge at the Manchester District Registry accepted the Trust's argument that any damages should be limited to loss of earnings in respect of Mr Edwards' three-month contractual notice period. Mr Edwards successfully appealed on this preliminary point:

- firstly, to the High Court, which held that if Mr Edwards' claim succeeded, loss of earnings could also be awarded in respect of the period during which he would have remained employed had the contractual disciplinary procedure been followed; and
- secondly, to the Court of Appeal, where Mr Edwards argued that the High Court's approach to the scope of any damages, although wider than the District Judge's, was still too limited. He considered that his losses arising from the Trust's dismissal of him went far beyond the time it would have taken it to do it "properly". Had the Trust not broken his contract, he said, he would not have been dismissed **at all**, and therefore limiting his damages to three months' money or thereabouts was not providing him with an adequate remedy.

The Trust based its defence principally on the case of *Johnson v Unisys [2001]* in which the House of Lords held that an employee could not rely on the implied contractual duty of trust and confidence to claim damages for the manner of dismissal. However, the Court of Appeal ruled that Mr Edwards' claim was very different in that it concerned the breach of an **express** contractual claim and therefore could result in an award of damages (to be assessed by the Court) if the claim were successful on its merits.

“Mr Edwards’ claim... concerned the breach of an **express** contractual claim and therefore could result in an award of damages”

The Court of Appeal assumed for its decision on this scope of damages question that the facts set out by Mr Edwards were correct. It agreed with him that a claim for damages as a result of the findings of personal or professional misconduct leading to his dismissal and consequent loss of professional status which had been made against him in disciplinary proceedings conducted in breach of contract, but which would not otherwise have been made, could be made. The key words here are obviously "findings which would not otherwise have been made". If on a full merits hearing the Court decides that Mr Edwards would have been dismissed regardless of the constitution of the panel or legal representation, then his victory will be pretty empty. A breach of contract without consequent losses does not take the victim far. A more traditional remedy might be the seeking of an injunction to prevent the dismissal taking effect until done properly – that would require the employee to show a decent arguable case that the outcome would then be different, but without such an argument, taking contract proceedings for breach of a disciplinary procedure would be pointless anyway.

Mr Edwards' terms and conditions of employment included a contractual disciplinary procedure with specific terms which were not followed in their entirety by the Trust. Although employers are usually advised not to have contractual disciplinary procedures they are common within the public sector. This case highlights the importance of following the terms of any such procedures carefully and fully, as a failure to do so could in principle lead to a claim for substantial damages for breach of contract.

UPDATE: EQUALITY ACT 2010 CODES OF PRACTICE

The Equality Act 2010 received Royal Assent on 8 April 2010 and will start coming into force this October. In line with its statutory powers, the Equality and Human Rights Commission is producing Codes of Practice, the purpose of which is to explain the new statutory provisions in the Equality Act 2010 relating to employment and equal pay to ensure that the law is applied consistently by the Courts and Tribunals. The consultation on the draft Codes closed in April. The Commission has confirmed that it expects to lay the Codes before Parliament for approval in July 2010.

Hammonds is running seminars on the Equality Act 2010 in June and July. Whilst the Act is principally intended to consolidate all current discrimination legislation into one statute, there are a number of areas that will require employers to consider amending standard documents and/or policies and procedures. In the seminars, we will set out the practical implications of the Act for employers and there will opportunities for questions. For further details and information about booking places, [click here](#).

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