

Employment law

HND Yr2



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Introduction:

"To what extent does the obligation to maintain mutual trust and confidence ensure fair dealing between the employer and employee in respect of disciplinary proceedings, suspension of an employee and dismissal?"

Mutual trust and confidence:-

There are certain duties that an employer has to apply to its employee. This is to obtain a mutual obligation of trust and confidence between each other. A duty of cooperation is owed, if the employer doesn't show a duty of cooperation to the employee, this then can lead the employee to terminate the contract, sue or affirm the breach and continue.

In the employment contract of the employee a duty of mutual trust and confidence will show a positive impact on the employer when warning the employee who is exercising the important rights in terms of the employment contract. However the duty of mutual trust and confidence can benefit to alert the employee of making a financial mistake. This will destroy the relationship between the two. (*University of Nottingham v (1) Ezz (2) The Pensions Ombudsman* [1999] IRLR 87).

A local authority councillor had commented to a council employee that verbal abuse and accusations of dishonesty, during duties were carried out on the council premises that breach of the duty of mutual trust and confidence should be taken into account and gave the rights to an employee to resign from the organisation and claim against constructive dismissal. The employer should have the duty of providing a safe and friendly working environment which made life easier for all employees to tolerate the conduct. (*Moore v Bude-Stratton Town Council* [2000] IRLR 676).

The Employment tribunal's one main function is to examine the employer's conduct to judge whether or not its conduct is acceptable and sensible so that the employee can tolerate the conduct. A related case (*Woods v W M Car Services (Peterborough) Ltd* [1982] IRLR 413, approved in *Malik & Anor v Bank of Credit and Commerce International SA* [1997] IRLR 462). The employer who destroyed and serious damage of the relationship of trust and confidence between the employer and employee was due to the conduct of the employer.

Some examples of breaches by employers which have taken place previously are: permitting an employee to be the victim of persistent verbal abuse/sexual harassment (*Reed v Steadman* [1999] IRLR 299), health and safety, making an unsubstantiated allegation of theft (*Robinson v Crompton Robinson* [1978] ICR 401).

Dismissal and Disciplinary procedures:-

The Employment Act 2002 introduced the Dismissal and Disciplinary procedures. This act will only be followed by employees who have worked 12 months or longer for a business. "If employer fails to follow the procedure, they will be forced to have action against unfair dismissal.

The dismissal and Disciplinary proceedings will apply only if the employer has given an official warning.

The Employment Act has now changed as it has a limitation period of up to 4-3months. After 1st October the 3months is given again even as much as 6months.

The Disciplinary procedures stages are:-

- Allegations must be set out in writing to employee
- The Allegations must be talked through with the employee in a meeting.
- A delay should be avoided for the meeting; the time and place of meeting should be convenient to the employee and employer.
- The employee has the right to be represented with company and even have the meeting postponed up to 5 working days if it is necessary.
- The employee should take place at the meeting.
- The decision should be clearly stated to the employee, if there is a right to appeal against.
- If an appeal is made by the employee there should be further meetings held with requirements such as timing, attendance should be taken into account by the employee.
- The meeting should not be held until the dismissal or the disciplinary action is taken.
- A senior manager than the employer who held the first meeting, should hear the appeal.

Unfair and constructive dismissal ERA 1996 section 95. Constructive dismissal means where the employee decides to resign and also wants to claim of a "dismissal". 95(1) (c) the employee will evidence that in the employment contract he had the right to terminate the contract by a reason of the employers conduct. To prove this is to address that the employer breached the mutual trust and confidence. *Western Excavating v Sharp* [1978] IRLR 84, in order to claim for constructive dismissal you need to prove that the employee resigned due to fundamental breach of the contract by the employer. Difficulties for an employee was to show that an express contract term had been breached by the employer, it was said by EAT. The parties should maintain a mutual trust and confidence in the relationship between the two. *Arnold J in courtaulds Northern Textiles v Andrew* [1979] IRLR 84 came with a deception that the circumstances had become to serious of the employer which led to damage the relationship of confidence and the trust between the employer and employee, it is fundamental in an effect on the contractual relationship.

Gogay v Hertfordshire county council [2000] IRLR703

G worked at a children's home, while E a 13year old girl with difficulties of learning and communication was living there. E felt that an obsession with G, who behaved in a sexually and inappropriate way. Allegations were made against G, due to G touching her and were suspended by a letter stating G was accused of sexual abuse. In the investigation it was told that G had suffered from depression which was due to the suspension. Could this suspension be a breach of term of confidence and trust in the employment contract? Or whether the damages done to G for psychiatric illness were payable for breach? The CA decision was said to investigate the incidence, the letter that was given to G had stated

serious damage between the relationship between the employer and employee. A transfer was not made to other work for G as a short period of leaving arrangements. The local authority took into account of the implied contractual term of confidence and trust. Therefore there was a clear indication of mental distress, injured feelings and psychiatric illness. G had been rewarded for damages for financial loss and damage for psychiatric illness.

Eastwood and Williams's v Magnox Electric plc: McCabe v Cornwall country Council (2004) IRLR 733.

E and W were dismissed by their employer. They alleged negligence and breach of mutual trust and confidence in employment contract for also claimed for suffering from psychiatric illness which was due to deliberate misconduct.

In the other case a teacher (M) was unfairly dismissed after been suspended and disciplinary proceedings. M had made allegations in high court claiming against suffering from psychiatric illness due to failure to investigate the allegations made and the conduct of disciplinary proceedings properly.

Modified Dismissal and Disciplinary procedure:

If the employee has already been dismissed then the modified DDP will apply. It is less strict and requires the employer to give a written response to the request made by the employee.

A disadvantage for the employee can be that if the procedure is not followed then a claim can not be represented. Even if a meeting is not attended by the employee then this can lead to a loss in compensation. A reduction of about 10 to 15% can be made. But the employer will disadvantage from this if s/he is to blame for, this is by having an increase on the compensation. The procedure itself should be followed a total of 6months for the tribunal.

Grievance procedure:

Grievance procedure is when problems occur in the workplace for the employee. Problems could include working conditions, the relationship with their colleagues. The grievance should be raised to the management by the employee to make conditions better and to solve them. This is done so that difficulties are not developed in the workplace. Grievance are raised with issues like the terms and conditions of an employment, health and safety, harassment, equal opportunities etc.. The grievance should be raised formally with the management. Employees need to go through the statutory procedure to use the grievance for an application to an employment tribunal.

The standard procedure is:-

1. The grievance is informed to the employer in writing.
2. The employer organises a meeting in order to discuss the grievance, fair requirements must be applied example the time should be reasonable.
3. The employee is notified in writing of the decision and that the employee has the right to appeal against.
4. A another meeting will be held with senior management for a right to appeal.
5. The modified grievance will only apply only if the employee has resigned the company.

Issues such as customer relationships or equal opportunity can be raised; the employer should take this into account. The business should clearly state that it is clear to third parties, that grievance is considered a serious matter and action will be taken as a business has the right to protect its employees to maintain a mutual trust and confidence.

In an incidence, if a employee is dismissed, lead to disciplinary hearing or their is a right to claim against unfair dismissal at the employment tribunal. The employers need to make sure they have followed the statutory procedures if they are dismissing a worker.

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Lecture notes were also used.