

Masterfoods –v- Wilson: A Warning to all Employers

Recently the Employment Appeal Tribunal upheld a tribunal's decision that the requirement in the employer's disciplinary policy requiring employees to provide grounds of appeal in order to proceed to appeal was to deprive the employee in that case of his right of appeal. Accordingly, this fell foul of the statutory dispute resolution procedures rendering his dismissal automatically unfair.

The case provides a warning to all employers to:

- ensure that the minimum statutory conditions are satisfied in their own dispute and disciplinary procedures; and
- review the fairness of their investigation and disciplinary procedures.

Background

Mr Wilson was employed by Masterfoods as a technical operator from 1991 until his dismissal in November 2005. In May 1993 he began a long period of sickness. However, doubt arose on the part of the company, in respect of the genuineness of Mr Wilson's illness as a result of reports that he was engaging in activities which were inconsistent with his symptoms. In particular it had transpired that he had taken part in a fly-drive holiday to Florida. He had also been observed by private investigators, driving at high speed to Calais – although the investigators were unable to follow him as, due to his speed, they could not keep up.

The company initiated their contractual disciplinary process in order to deal with allegations that Mr Wilson had obtained company sick pay fraudulently and had been dishonest in respect of his reasons for absence.

The subsequent disciplinary hearings and investigation process was conducted by Mr Lawrence Vingoe, a personnel manager. The outcome of this process was a decision that Mr Wilson should be dismissed. Mr Wilson was informed of this and also of his right to appeal the decision on 9 November 2004 by letter. Under the company's disciplinary procedure employees who wished to appeal were required to detail their grounds for appeal in writing. Mr Wilson wrote to the company on 13 November informing them that he intended to appeal the decision and that his written grounds of appeal would follow. On 6 December the company received a letter from Mr Wilson's solicitors setting out the

grounds of appeal. However, the Claimant was informed that his appeal would not be heard due to the delay in presenting the grounds for appeal.

Mr Wilson lodged a claim with the employment tribunal and part of his complaint was that he had been unfairly dismissed. The tribunal upheld his claim for unfair dismissal, concluding that his dismissal was both procedurally and automatically unfair.

Automatic Unfair Dismissal

The EAT concluded that the tribunal was correct in holding that the dismissal was automatically unfair under s98A of the ERA 1996. Step 3 of the statutory dispute and disciplinary procedure provides that if the employee informs his employer of his wish to appeal, the employer must invite him to attend a further meeting. It is not required that this information is passed to the employer in writing, nor need any grounds of appeal be specified. Accordingly, in light of the statutory position, Masterfood's reason for refusing to allow Mr Wilson an appeal was unjustified.

Procedural Unfairness

The Employment Appeal Tribunal agreed with the original tribunal's finding that the investigation was incomplete and fell short "...of what was required to be done to meet the standard of a reasonable employer...". Further, the fact that Mr Vingoe was involved in all stages of the process and that the evidence suggested that he was biased, were other factors that led the tribunal to conclude that the process had been procedurally unfair.

Impact of Decision on Employers

This case highlights the danger that employers may be exposed to the risk of findings of automatically unfair dismissal despite following their own internal disciplinary procedures "to the letter". As the statutory procedures only provide for a very basic framework, it is understandable that employers often wish to put in place more detailed dispute and disciplinary procedures. However, employers must ensure that their own disciplinary policies strictly incorporate the statutory procedures and do not detract from them. In this case it was the employer's failure to comply with step 3 of the statutory disciplinary procedure that eroded the employee's right to an appeal rendering his dismissal automatically unfair.



In the case where an employer fails to comply with the statutory procedures, the tribunal must increase the amount of any award by 10% and may, if it is just and equitable to do so, make a further increase of up to 50% in total. As failure to comply with the statutory procedures can result in substantial cost to the employer, employers would be well advised to take all steps to avoid this possibility.

The case also highlights the need for objective procedural fairness at all stages in the investigation and disciplinary process. In relation to this we have produced a practical note designed to provide employer's with general guidance in respect of dealing with the statutory dispute and disciplinary procedures and would be happy to provide this on request.