



Expired Warnings in Future Disciplinary Proceedings

The Employment Appeal Tribunal handed down a judgement last Wednesday which states that expired warnings can never be taken into account when an employer is deciding whether to dismiss an employee for conduct reasons. The case is called *Airbus UK v Webb*.

The facts of the case are that Mr Webb was dismissed for watching television during working time. Four of his colleagues, who were guilty of the same conduct, were not dismissed. They were all guilty of gross misconduct according to the employer's disciplinary procedure. However, the disparity of treatment between Mr Webb and his colleagues was due to the fact that Mr Webb had been given a final written warning for similar conduct in the past whereas his colleagues had no disciplinary records at all. Mr Webb was disciplined three weeks after his previous warning had expired.

The employer argued that the significance of the expired warning was that it negated the justification for allowing mitigation of the conduct, which was applicable to Mr Webb's colleagues. Nonetheless, the Employment Tribunal found the dismissal to be unfair because of the inconsistent treatment. The Employment Appeal Tribunal upheld their decision.

Analysis

It is now clear that where a decision to dismiss an employee on conduct grounds is dependant upon taking into account an expired warning, such a dismissal is highly likely to be found to be unfair. The rationale is that an employee who is given a warning, which is stated to remain in force for a specified period, is entitled to assume that it will cease to have effect after that period.

Furthermore, the ACAS Code of Practice, which Employment Tribunals are required to take into account in determining relevant issues, provides that all warnings (including final written warnings) should normally be disregarded for disciplinary purposes after a specified period. The clear inference from this provision is that a warning, which remains hanging over an employee's head for an indefinite period, would not normally be consistent with good industrial relations practice.



This case restricts the flexibility of employers when faced with a similar situation. However, the Employment Appeal Tribunal does conclude that if employers are going to be denied the flexibility to have regard to expired warning in any circumstances, then they must be allowed flexibility to formulate rules to allow for exceptional cases. Accordingly, employers may wish to review the wording of their disciplinary procedures and consider whether they need to be revised to provide for exceptional cases. As always, it is essential that any revisions to your policies are carefully drafted, are clearly drawn to the attention of employees and where appropriate incorporated into their contracts.

This e-briefing is sent to you by Anderson Strathern's [Employment Department](#). We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact Chris McDowall, or any other member of our team.