



Employers exposed to contract risk

A recent case has led to a finding which could have severe financial consequences for employers who have contractual disciplinary procedures.

The Court of Appeal has recently held that where a breach of a contractual disciplinary procedure results in an incorrect finding of misconduct, and this in turn affects the employee's ability to find comparable alternative employment, additional damages can be awarded to reflect the stigma of having wrongly been found guilty of misconduct.

The case of *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* concerns a consultant trauma and orthopaedic surgeon claiming that a trust failed to follow a contractually binding disciplinary procedure before dismissing him. He alleged that had the correct procedure been followed, he would not have been found guilty of misconduct which, he says, led to him not only losing his job but also prevented him finding comparable alternative employment. Since compensation for unfair dismissal in an employment tribunal is currently capped at £65,300, Mr Edwards sued for breach of contract damages in the High Court. The High Court determined that Mr Edwards was entitled to recover loss of earnings in respect of his contractual notice period and the period during which he would have remained employed whilst a disciplinary procedure which complied with the terms of his contract was carried out. However, the Court of Appeal went further and said that, in such cases, damages can also be awarded to reflect the stigma of having wrongly been found guilty of misconduct. It is possible that the Trust will appeal the decision to the Supreme Court but in the meantime this decision could have severe financial implications for employers who have contractual disciplinary procedures in place.

Employers need to take care to ensure that their disciplinary procedures are non-contractual so that they will not end up with breach of contract claims against them where the damages for loss of earnings are uncapped.

If you are concerned that your disciplinary procedures may be contractual we can provide a one hour review of your contracts of employment and policies and procedures free of charge and can advise you of any changes that need to be made. To discuss this or any other area of employment law please contact Elizabeth Judson on 0115 9 100 200 or email enquiries@actons.co.uk.

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