



# Solutions

## Monthly Newsletter | April 2023



### Employment Law Cases

#### Employment Law cases

**In a case with which we dealt ourselves**, our client informed us (after the fact) that they had dismissed an employee with under two years' service for theft. The information we were given was that they had held a meeting with him; a number of other issues (timekeeping and performance) were also discussed but ultimately they had dismissed him for theft. They subsequently sent him a letter confirming the dismissal, again including the other issues but stating that he was being dismissed for Gross Misconduct in respect of the theft.

He contacted ACAS claiming Wrongful Dismissal. Unlike Unfair Dismissal, an employee does not have to have two years' service to bring a claim of Wrongful Dismissal. Upon investigation with the client, it transpired that whilst they had discussed the other issues at the meeting, they had not in fact mentioned the theft nor told him at the meeting that they were dismissing him for gross misconduct. This was only latterly set out in the letter.

On that basis, therefore we advised that this was indeed Wrongful Dismissal. Given his length of service, the client would have been able to dismiss with notice but instead tried to save money by labelling the dismissal as being for Gross Misconduct after the meeting. Had they correctly addressed the theft in the meeting and told the employee that this was the reason for the dismissal, they could have dismissed him for Gross Misconduct. As they did not do this, they were liable for the notice pay (and also pay for outstanding holiday which they had incorrectly calculated).

**There have been a couple of cases in the Employment Tribunal which also highlight the importance of procedure when dealing with disciplinary matters, regardless of the allegation which the employee is facing.**

**In Hagan v Sky Retail Stores**, the employee who was a Sales Advisor at a Sky stand in a shopping centre was investigated for a number of alleged offences. These included taking his daughter to his place of work and leaving her there unattended, giving his personal phone number to potential customers, making inappropriate comments about women, and playing music with inappropriate lyrics whilst on the stand.

He was informed in May 2020 that there was a disciplinary case to answer and invited to a disciplinary hearing on 4 June 2020. This meeting did not go ahead and, for various reasons including Mr Hagan's illness, delays in speaking to witnesses, new information being provided, he was not

contacted again regarding the disciplinary process until 5 November 2020. He was dismissed on 25 November 2020 for breaching Sky's data protection policy by sending a text with a customer's details using his personal mobile. The other allegations were not upheld.

The Tribunal found that whilst Mr Hagan had indeed breached the Data Protection Policy, the delay between the first disciplinary hearing and the subsequent hearing at which he was dismissed was unreasonable, particularly as the employer had failed to contact him during that time. This meant that dismissal was outside the range of reasonable responses and was found to be Unfair.

*This case highlights the importance of conducting a disciplinary process in a timely manner and not having any unjustifiable delays between the investigation and disciplinary proceedings.*

**In Yule v Health Hut**, the employee who was a pharmacy assistant was dismissed following an anonymous customer complaint.

The complaint was about a female member of staff on one of two days in January. Miss Yule had spoken to a difficult customer on one of those days but a colleague stated that she had not acted inappropriately. There were also two other employees on duty on those days and Miss Yule was aware of other complaints having been made that week. The company director, Mr Shah concluded that the complaint was about Miss Yule and, after a heated conversation, she was told to handover her keys and leave. Mr Shah subsequently took some external HR advice and at that point attempted to arrange a disciplinary hearing. He also tried to pay Miss Yule for two months but she declined the payments, labelling them as fraudulent as she had already been dismissed.

The Tribunal found that Miss Yule has been Unfairly Dismissed due to a complete lack of disciplinary process or procedure. They agreed that the attempts to arrange disciplinary hearings and to pay wages to her as if she were still employed were a cynical attempt to try and cover up mistakes and to rewrite history.

*This case highlights the importance of taking HR advice at the outset and conducting a formal disciplinary process rather than dismissing an employee in the heat of the moment.*

**HR Solutions can correctly advise you on how to conduct disciplinary proceedings in order to avoid costly claims of wrongful or unfair dismissal.**



## Hot Topics

### HR support for Agriculture

The agricultural sector has been particularly hard hit recently and HR issues will also inevitably occur in day to day working. Employers may have employees who were employed before 1 October 2013 whose terms and conditions are still governed by the Agricultural Wages Board in respect of overtime rates, nightwork rates, call-out rates, sick pay, and the provision of a dog allowance.

They may provide accommodation to their employees which has implications under the National Minimum Wage regulations as well as the risk of entering into a tenancy agreement or agricultural tenancy.

In addition, they may operate seasonal working, both in terms of fluctuating numbers of employees and also the maximising of daylight hours. They may also utilise a high volume of EU Nationals in their workforce and / or need to bring overseas workers to the UK to assist with labour shortages.

#### HR Solutions can assist by:

- Drafting appropriate Contracts of Employment, according to whether or not the Agricultural Wages Board applies
- Advising on the accommodation off-set rules as prescribed by the National Minimum Wage regulations, and the different rules which apply under the Agricultural Wages Board (where still applicable)
- Ensuring that the appropriate wording is used in respect of accommodation to avoid entering into a tenancy agreement and ensuring that employees will be legally required to vacate the property when their employment ends
- Drafting Annualised Hours / Seasonal Working Contracts as appropriate
- Incorporating wording into Contracts of Employment in respect of hours of work to reflect daylight working, adverse weather conditions, temporary shortages of work etc
- Advising on working time issues e.g. rest breaks, daily and weekly rest, and Workforce Agreements in respect of working hours
- Supporting either remotely or on-site where necessary in respect of recruitment, disciplinaries, redundancy consultations, family-friendly leave etc
- Advising on sponsoring overseas workers on the Seasonal Worker scheme to come and work in the UK either picking fruit, vegetables or flowers, or working with poultry.



# Statutory Rates

## Employment Law cases

The Government has further announced increases to the following employee statutory rates for the year 2023 / 2024:

### Redundancy, Unfair Dismissal, and other penalties

	From 6 April 2022	From 6 April 2023
Limit on a week's pay for calculating Redundancy Pay / Basic Award in Unfair Dismissal	£571	£643
Maximum Basic Award for Unfair Dismissal	£17,130	£19,290
Maximum Compensatory Award for Unfair Dismissal (NB no upper limit for Whistleblowing / Health & Safety dismissal cases)	The lower of £93,878 or a year's pay	The lower of £105,707 or a year's pay
Failure to inform / consult – collective redundancy (Protective Award)	Up to 90 days' pay	Up to 90 days' pay
Failure to inform / consult – TUPE transfer	Up to 13 weeks' pay	Up to 13 weeks' pay
Failure to provide ERA s1 particulars	2-4 weeks' pay (max £571 per week)	2-4 weeks' pay (max £643 per week)
Breach of failure to be accompanied	2 weeks' pay (max £571 per week)	2 weeks' pay (max £643 per week)



Please see below some examples of the work that we have completed recently.

## Office

## Type of work

Peterborough	On-site support at a Gross Misconduct Appeal Hearing
Milton Keynes	Advice and template documents in respect of a redundancy consultation process
London	Contract of Employment and Right to Work in the UK check
Peterborough	Advice and support with a TUPE consultation process; Contract and Employee Handbook review; construction of new Employee Handbook
Maidstone	Continued on-site support with a redundancy / TUPE consultation process

If you require HR support, please contact us at [HRsolutions@mhllp.co.uk](mailto:HRsolutions@mhllp.co.uk) to discuss how we could assist you.

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available according to your needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



[HRsolutions@mhllp.co.uk](mailto:HRsolutions@mhllp.co.uk)

**Now, for tomorrow**