



HR

Solutions

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Tribunal cases

The important of HR policies

In our most recent [newsletter](#), we discussed Unfair Dismissal and the potential consequences for employers.

Here, we consider a couple of cases which highlight the importance of having well defined policies in place in order to defend a claim for Unfair Dismissal in the Employment Tribunal.

In **Fekete v Citibank**, the employment tribunal found that a senior analyst who included his partner's meals on his expenses was fairly dismissed.

Mr Fekete had been employed by Citibank since July 2015. He had a business trip to Amsterdam on which he took his partner. Upon his return, he submitted an expense claim which, amongst other items, included a meal for two people.

His employer asked him about the claim but he was vague in answering. There was then an investigation during which he was asked the direct question as to whether the expense was in respect of two people to which he answered that it was not.

Subsequently, he admitted that in fact it was, and a disciplinary meeting was convened. Mr Fekete was summarily dismissed for Gross Misconduct.

The employer had a very clear expenses policy in place which stated that a list of all people for whom expenses were being claimed was required, and specifically that expenses for accompanying partners were excluded. They therefore found that he had breached the expenses policy; in addition, as he had failed to admit to this when originally questioned, this constituted serious non-compliance with their banking code of conduct. Mr Fekete brought a claim for unfair dismissal.

The Employment Tribunal found that the wording of the expenses policy meant that he would have been well aware that he could not claim expenses in respect of his partner's meal. Whilst this may have been an initial error in submitting the claim, he had opportunities to correct this but had failed to do so. Summary dismissal fell within the range of reasonable responses and was therefore fair.

In **Glenholmes v Network Rail Infrastructure Ltd**, the Tribunal found that a train technician who inadvertently took cocaine was unfairly dismissed, but not entitled to compensation.

Mr Glenholmes had been employed by Network Rail Infrastructure Ltd since July 2014. He tested positive for cocaine in a routine drugs test at work and was suspended. There was an investigation during which Mr Glenholmes stated that he had bought some "Peruvian tea" from a market stall; no ingredients were listed for the tea but subsequent to the failed drugs test he had researched it and found that it contained cocaine. He further stated that he would not have bought it had he known.

A disciplinary meeting was convened and Mr Glenholmes was summarily dismissed for Gross Misconduct.

The employer had a very robust policy in place which clearly stated that, due to the safety critical nature of their work, they had a zero tolerance approach to the use of illegal substances. The policy was also contractual. Mr Glenholmes brought a claim for unfair dismissal.

The Employment Tribunal found that there had been some procedural errors made by the employer and that on this basis the dismissal was unfair. The Tribunal held, however, that the employee had contributed to his dismissal by failing to research the tea prior to consuming it, knowing the approach which his employer had in their drugs policy. For that reason, whilst the claim for unfair dismissal was upheld, there was a 100% reduction in the compensation which would be awarded.

Employers should have well-defined policies in place to make clear to employees what actions or behaviours will be considered to be gross misconduct. Such policies must be easily accessible to employees and their existence communicated in order for the employer to be able to rely on them to dismiss. Provided that the employer conducts a fair procedure, it will be able to demonstrate that summary dismissal falls within the range of reasonable responses.

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Employment Law

HR Solutions have many years' combined experience of handling such issues employment law issues as they arise, and have worked across several different industries. We can assist and advise you on all of the following:

TUPE - Transfer of Undertakings (Protection of Employment):

- A London-based Property Management company sought to take over the employment of concierge staff from the building owners. We advised on the TUPE process, carried out the HR due diligence, and conducted the consultation meetings on the client's behalf, most of which were held out of office hours due to the employees' shifts. We also sent all the required letters to the employees.
- A Milton Keynes online company acquired another similar company with a large number of employees. We assisted with the process for electing employee representatives, including providing the necessary documentation for the ballot process, as well as advising on the consultation process itself and providing all template letters for the client's use.

Settlement Agreements:

Where you are seeking to exit an employee from the business but either do not wish to go through a formal procedure or are aware that you have not got sufficient evidence to do so, one option is to invite the employee to enter into a Settlement Agreement whereby mutual termination of employment is agreed with the employee being paid a sum in compensation for agreeing not to pursue any claims against the employer in the Employment Tribunal. HR Solutions can advise on how to enter into a Without Prejudice conversation and the amounts to be offered, and can draft the initial Settlement Proposal letter. We can also draft the Settlement Agreement and liaise with the employee's solicitor on your behalf.

Case Study:

A farm in Kent had a long-serving employee who had been challenging to manage throughout the entirety of the employment relationship. The farm had become unprofitable and it was proposed to rent out some of the land thus reducing the number of livestock on the property. There was no clear-cut TUPE situation as the duties which the employee primarily performed were not themselves being transferred. A redundancy consultation was commenced (with which we supported, supplying the appropriate documentation and attending the consultation meetings); however, due to the nature of the employment relationship, a Settlement Agreement was entered into. We drafted the Settlement Proposal letter and the Settlement Agreement, and then liaised with the employee's Independent Relevant Advisor to obtain signature by all parties, thus resolving the issue.



ACAS Early Conciliation:

Where you do have an employee who wishes to make a claim against you in the Employment Tribunal, it will firstly be referred to the Advisory, Conciliation and Arbitration Service (ACAS) for Early Conciliation. This is an opportunity for both parties to reach agreement without the case progressing to tribunal.

There is no obligation for you to enter into conciliation, nor to make any offer to the employee; however, you may make a commercial decision to do so rather than have to draft witness statements, exchange bundles and attend at the Tribunal on the day, even if you believe the employee's case to have no merit. HR Solutions can take instruction and liaise with ACAS on your behalf; this will usually involve the payment of an agreed sum without any admittance of liability by yourself.

Case Study:

A claims management company with US ownership asked for advice to terminate the employment of an employee with under two years' service. Advice was given, highlighting that, as the employee had protected characteristics, it was possible she might make a claim for discrimination. This did indeed happen and she raised a claim for race discrimination (for which no qualifying service is necessary); there was also an error made in respect of her P45. We liaised with ACAS on the client's behalf; and they made the decision to make a payment to her with no acceptance of wrongdoing for which we then drafted the COT3 (formal ACAS agreement).

Support at employee meetings:

We can also attend employee meetings (disciplinary, grievance, welfare, consultation) to support you if you lack confidence in holding them alone or are concerned that you may say the wrong thing! We can provide as much support as you require, including scripting the meetings for you, provided that you always remain the decision-maker.

HR Solutions offer practical advice and support as well as a commercial way of thinking.

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

 **London**

Flexible Working policy in respect of the amended legislation effective from April 2024

 **Peterborough**

Directors Service Agreement

 **London**

Calculations and report on the liability for underpaid holiday pay

 **London**

Drafting of letters to be sent to employees regarding payment of backpay

 **Thames Valley**

Ongoing advice on long-term sickness absence and phased return to work

 **London**

Replacing the Authorising Officer on the Sponsor Licence



How we can help?

If you require HR support, please contact us at HRsolutions@mha.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.



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Now, for tomorrow

